TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~270.~~ 76

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, APPELLANT,

vs.

ELIZABETH A. BAILEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 25, 1870.

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4 *Original bill.—Filed Feb'y* 10, 1868.

PHŒNIX MUTUAL LIFE INS. CO.
vs.
ELIZABETH A. BAILEY.
} 1188, equity docket 8.

To the honorable the judges of the supreme court of the District of Columbia:

Your orator, The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, a corporation chartered by the legislature of the State of Connecticut, brings this bill against Elizabeth A. Bailey, of Washington City, in the District of Columbia, and thereupon your orator complaining says:

That your orator in the exercise of its business of insuring lives had, prior to the month of June, in the year 1867, established an office in the city of Washington, in the District of Columbia, and had there an agent, H. A. Brewster, charged with the duty of receiving applications of persons desiring to assure their lives, and transmitting such ap-
5 plications to the office of the company at Hartford, Connecticut.

That, on or about the 10th day of June, in the year 1867, one Albert W. Bailey applied to the said agent of the company, at Washington, D. C., for an insurance upon his life of $4,000, and, in response to questions addressed to him by the said agent, made a statement to the said agent in writing respecting his health, physical condition, and other matters, a copy of which is hereto annexed, marked Exhibit A.

That the said A. W. Bailey was thereafter, on or about the said 10th day of June, examined by a physician designated by the said agent of your orator, who made a statement respecting the health, habits, and physical condition of the said Albert W. Bailey, a copy of which is hereto annexed, marked Exhibit B.

That the said Albert W. Bailey, in his statement as aforesaid,
6 having been requested to name an intimate friend, named as such one Mrs. Von Kamacher, and the said Mrs. Von Kamacher, on the 10th of June aforesaid, made and signed a certificate respecting the health and habits and physical condition of the said A. W. Bailey, of which a copy is hereto annexed, marked Exhibit C.

And the said application and statements being forwarded to the president of the said company, at Hartford, Connecticut, and being by him approved, your orators issued a policy upon the life of the said A. W. Bailey, and authorized H. A. Brewster, their agent, to deliver it.

That your orator prepared a policy for $4,000 in the name of the said Albert W. Bailey, but was requested by Mrs. Von Kamacher, who about that time intermarried with the said Albert W. Bailey, to increase the policy to $6,000, and make the same payable to herself by the name of Elizabeth A. Bailey, wife of Albert W. Bailey, and the said orator made and executed a policy in conformity with her directions, and
7 having received the consideration agreed upon for the same, to wit, $117 60, of which $59 60 were paid in cash, and $58 in a promissory note, purporting to be signed by Mrs. Elizabeth A. Bailey, the said agent delivered to her the said policy, of which a copy is hereto annexed, marked Exhibit "D."

That afterwards, on or about the 15th day of July, 1867, the said defendant, Elizabeth A. Bailey, applied to the said H. A. Brewster, agent as aforesaid, for another policy on the life of her said husband to the amount of $4,000, and your orators made, and their agent being thereto

authorized by your orator, delivered to the said defendant, in consideration of the sum of $78 40—$39 40 in cash, and 39 in a promissory note of the said Albert W. Bailey—another policy in the sum of $4,000 in favor of the said defendant, of which a copy is hereto annexed, marked Exhibit "E."

That by the said policies your orator became bound to pay to
8 the said defendant, upon the death of the said Albert W. Bailey, the several sums of $6,000 and $4,000.

And your orator further shews that in issuing the said policies, and entering into the obligations thereby created, your orator's agents and officers confided in the representations made by the said Albert W. Bailey, and the said defendant, to whom he had referred, and who in her certificate hereinbefore referred to had represented herself as having known him for several years, and would not have issued said policy had not said representations been made by the said A. W. Bailey and the defendant; that the examination of a party by a physician, tho' necessary as an additional test, and useful in detecting organic diseases or physical malformation, is entirely inadequate to discover those secret causes of disease which arise from the bad habits of the individual, or defects of constitution which are manifested only
9 by occasional symptoms, and which may be entirely absent while the party is under examination, and are within the peculiar knowledge of the party himself. And it is therefore the usual practice of insurance companies, and is the invariable practice of your orator, to require of all applicants themselves such information respecting their own habits, health, and condition as is necessary to the formation of a correct judgment as to the propriety of issuing the policy applied for; and it is made known to the applicant at the time of his application, and is made a condition in the policy issued by the company that the policy shall be void if any of the declarations or statements made in the application be found in any respect untrue; and before issuing the policy to the said Albert W. Bailey, when questions were proposed to him, and his answers taken as hereinbefore mentioned, he was informed that any untrue or fraudulent answers to the said questions, or any suppression of facts in regard to his health, habits, or circum-
10 stances, would vitiate the policy and forfeit all payments thereon; and the same condition was inserted in the policy, as by reference to the copies of the application and policy hereto annexed will fully appear.

And your orator further shows that many of the declarations and statements made by the said Albert W. Bailey, in answer to the questions so proposed to him upon his application for insurance, as hereinbefore stated, were, and have been found to be, untrue; and among other particulars in this, that the said Albert W. Bailey stated and declared, in reply to questions so proposed to him, that his health was good; that he was not addicted to the habitual use of spirituous liquors; that he had not then, and had not previously had, an habitual cough; that he had not within the preceding several years any severe sickness or disease; that he was not afflicted with any disorder or disease of any kind when so interrogated; that no application had been made to any
11 other company for assurance on his life. Whereas your orator charges the facts to be that the said Albert W. Bailey was then in an advanced stage of consumption or other disease of the lungs; that he had then, and for a long time had had, an habitual cough; that he had a short time before been under medical treatment for disease of the lungs; that he had lost a leg in the military service, and the wound was

still discharging, constituting a source of *irriation* and a drain on the system; that he was addicted to the use of spirituous liquors habitually, and to great excess: that he had, some months before, applied to the agents of Equitable Insurance Company of New York, or some other person or company, and the medical examiner of said company declined to recommend him, all of which facts the said Albert W. Bailey well knew, but denied and fraudulently concealed in his answers aforesaid.

12 And your orator further shows that in the certificate by the said defendant, and hereinbefore referred to and annexed, she stated that she believed the said Bailey's habits of living were temperate; that he was in good health; and that she knew no constitutional infirmity or other circumstance affecting him calculated to make insurance on his life more than usually hazardous. Whereas your orator charges the facts to be, that, as hereinbefore stated, the said Albert W. Bailey was in bad health, and ordinarily had bad health, and was intemperate in his habits, and that those circumstances rendered insurance on his life more than usually hazardous. And your orator charges that the said defendant well knew the facts, and untruly and fraudulently made the said certificate, with intent to induce your orator to assure the life of the said Albert W. Bailey for her benefit.

13 And your orator further charges that the original application of the said Albert W. Bailey to your orator for insurance was made by him thro' the device and procurement of the said defendant, and that in all his said acts and doings he acted by her direction and at her request; that at her request the said agent of the company, H. A. Brewster, was induced to visit the said Albert W. Bailey, at her house, and there to take his application and answers, and the medical examiner was induced, in like manner, to make the medical examination at the house of the said defendant; and that the said defendant so contrived these examinations at her house, and in her presence, in order that she and her said husband might more readily be enabled to deceive the said agent and examiner, and that she did, by her management, during such examination, aid her said husband in imposing upon and deceiving your orator's said agent and the examining physician.

14 And your orator further shows that after effecting said assurance the health of the said Albert W. Bailey rapidly declined, and he died in the month of October following; that in his last illness he was neglected and ill treated by his said wife, and not furnished with the comforts and attentions which his condition required, and to which his circumstances entitled him, thus manifesting a total want of affection for him.

And your orator further shows that the said defendant, Elizabeth W. Bailey, insisting upon the obligation of your orator under the said policies of insurance, demands of your orator the sum of ten thousand dollars, and threatens to bring an action at law to recover against your orator the same, and by such suit to harrass and injure your orator, all of which is contrary to equity and good conscience.

To the end, therefore, that the said defendant may answer the premises; and that she may be enjoined to assign, or attempt to assign, or to otherwise dispose of, the said policies, or either of them; and that she

15 be compelled by the decree of this court to deliver up the said policies to be cancelled; and that your orator may have such further and other relief as to your honors may seem just:

May it please your honors to grant unto your orators not only the writ of injunction but also the United States writ of subpœna directed

to the said defendant, commanding her, at a certain day and under a certain penalty to be therein specified, to be and appear in this honorable court, and to answer the premises, and abide by and perform such decree as may be passed therein, &c.

JNO. D. McPHERSON,
Sol'r for Compl't.

STATE OF CONNECTICUT, *County of Hartford, ss:*

Before the undersigned, a notary public within and for the county and State aforesaid, personally appeared Edson Fessenden, president of The Phœnix Mutual Insurance Company of Hartford, Con-
16 necticut, and made oath that he believes all and singular the matters and things stated in the foregoing bill to be true; and that so far as he has knowledge thereof they are true.

Given under my hand and seal this seventh day of February, A. D. 1868.

[SEAL.] EDWARD GOODMAN,
Notary Public.

[5-cent revenue stamp cancelled.]

Order for hearing application for injunction.—Filed February 10, 1868.

The application for injunction in this case will be heard on the 15th instant, provided two days' previous notice be given to the defendant.

Feb'y 10, 1868.

A. B. OLIN.

Notice of hearing appl'n for injunction.—Issued Feb'y 10*th*, 1868.

February 10th, 1868.

PHŒNIX MUTUAL LIFE INSURANCE CO. OF Hartford, Conn.,
vs.
ELIZABETH A. BAILEY
} No. 1188, equity doc. 8.

17 On Saturday, the 15th day of February, 1868, at 10 o'clock a. m., a motion for an injunction will be heard before said court. You are hereby notified to appear and show cause, if any you have, against said motion.

R. J. MEIGS, *Clk.*

Marshal's return.

Served copy of the within notice on def't.
Feb'y 11th, 1868.

D. S. GOODING, *Marshal.*

Summons to answer.—Issued Feb'y 10*th*, 1868.

In the supreme court of the District of Columbia, February 10th, 1868.

PHŒNIX MUTUAL LIFE INS. CO. OF HARTford, Conn.,
against
ELIZABETH A. BAILEY.
} No. 1188, equity doc. 8.

The President of the United States to Elizabeth A. Bailey, defendant:

18 You are hereby commanded to appear in this court at its first

special term occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as this court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter her appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

Sum'd def't.

D. S. GOODING, *Marshal.*

FEB'Y 11TH, 1868.

19 *Exh. A, B, C.*

EXHIBIT A.

Application for assurance to The Phœnix Mutual Life Insurance Company, Hartford, Conn.

Questions to be answered by the person whose life is proposed to be insured, and which form the basis of the contract.

1. In whose behalf or for whose benefit is the assurance to be effected? Name at full length: ———. Residence: ———. Occupation: ———. Relationship to the party to be insured: ———.

2. What is the full name of the party to be insured?—Albert W. Bailey. Occupation?—Clerk. Residence?—Washington, D. C., county of ———, State of ———. Post office address in full?—Washington, D. C.

3. Has the above-named person an interest in the life to be insured to the full amount now applied for? ———. What amount of assurance is desired?—$4,000.

4. What kind of policy is desired?—Life.

5. How is it desired that the premium shall be paid? Annually?—Yes. 5 years? ———. 10 years? ———. 15 years? ———. 20 years? ———. ½ note? ———. All cash? ———.

6. How is it desired that dividends be applied? ———.

7. Where and when was the party whose life is to be insured born?—At Oswego, New York. Year: 1843. Month: June. Day: 29. Age at nearest birthday: 24 years.

8. What is the present state of the party's health?—Good.

9. Is the party married?—No.

10. Is the party addicted to the habitual use of spirituous liquors or opium?—No.

11. Has the party been vaccinated, or had small pox, or varioloid?—Vaccinated.

12. A. Has the party been acclimated to a southerly climate?—A. No. B. If so, when and how?—B. No. C. Has the party had the yellow fever?—C. No.

13. A. What employments have the party been engaged in?—A.

Clerk. B. Have these employments had any injurious effect on health?—B. No.

14. Has the party ever had any of the following diseases? Apoplexy, asthma, bronchitis, consumption, cholic, disease of the heart, dropsy, fits, fistula, gout, insanity, liver complaint, paralysis, palpitation, quinsy, rheumatism, rupture, scarlet fever, spitting of blood, disease of the urinary organs.—No.

15. Has the party had inflammatory rheumatism? If so, when and how often?—No.

16. Is the party subject to dyspepsia, dysentery, or diarrhœa?—No.

17. Has the party now, or has he had, an habitual cough?—No.

18. Has the party ever met with any severe personal injury? If so, what?—No; except the loss of one leg, in the Army. It is cut off below the knee.

19. Has the party had during the last seven years any severe sickness or disease? If so, state the particulars, and the name of the attending physician, or who was consulted and prescribed.—No.

20. Is the party now afflicted with any disease or disorder of any kind, and, if so, what?—No.

21. State particulars as to the longevity of grandparents. A. On the father's side.—A. Lived to be old folks. B. On the mother's side.—B. Over 60 years.

22. Have the parents, or brothers, or sisters of the party been afflicted with insanity, or with pulmonary, scrofulous, or any other constitutional disease, hereditary in its character?—No.

23. Are the parents of the party living? Father: ———. Age: ———. State of his health: ———. Mother: ———. Age: ———. State of her health: ———.

24. Are the parents of the party dead?—Father: Dead. Age at death: 34. Cause of death: Fever. Mother: Dead. Age at death: 40. Cause of death: Cancer.

25. How many brothers has the party had?—One. How many are living and their names?—Benjamin. At what ages?—26. What is the state of their health respectively?—Good. How many have died? ———. At what ages? ———. Of what diseases did they die? ———. How many sisters?—Never had a sister.

26. Name and residence of the family physician of the party, or of one whom the party has usually employed or consulted.—Doct. Eliot.

27. Name and residence of an intimate friend.—Mrs. Von Kammecher.

28. Has any application been made to this or any other company for assurance on the life of the party? If so, with what result? What amounts are now assured on the life of the party, and in what companies? If already assured in this company, state the No. of policy.—No.

29. Is the party and the applicant aware that any untrue or fraudulent answers to the above queries, or any suppression of facts in regard to the health, habits, or circumstances of the party to be assured, will vitiate the policy, and forfeit all payments thereon?—Yes.

It is hereby declared that the above are fair and true answers to the foregoing questions, and it is acknowledged and agreed by the undersigned that this application shall form the basis of the contract for insurance, which contract shall be completed only by delivery of policy, and that any untrue or fraudulent answers, any suppression of facts, or should the applicant become, as to habits, so far different from condition now represented to be in as to make the risk more than ordinarily haz-

ardous, or neglect to pay the premium on or before the day it becomes due, shall and will render the policy null and void, and forfeit all payments made thereon.

Dated this 10th day of June, 1867.

(Signed) ALBERT W. BAILEY.

In presence of—
H. A. BREWSTER.

N. B.—Persons proposing an assurance are desired to answer all the questions, and to affix their signatures in the presence of a witness, previous to transmission to this office.

Recommended by H. A. Brewster, gen'l agent, at Washington, D. C.

Approved by—

——— ——— *President.*

EXHIBIT B.

Questions, each of which is to be answered by the medical examiner of the company.

☞ It is of course understood that the medical examiner is at liberty to put such other questions bearing upon the case as he may think proper, and that the whole examination will be thorough, exact, and circumstantial.

The medical examiners of this company are respectfully requested to bear in mind that our rates for assurance are predicated on sound lives, and to recommend no others.

1. Name and residence of the person examined.—Albert W. Bailey, Wash., D. C.

2. State the following particulars.—Weight: 124. Height: 5 ft. 8 in. Circumference of the chest: 39 in. Figure: Good. General appearance: Healthy.

3. State the condition of the heart and respiratory organs, as indicated by auscultation and percussion of the chest.—Healthy.

4. A. State the character of the respiratory murmer over the lungs.—A. Healthy. B. State the character of the respiration.—B. Healthy. C. State the condition of the organs of respiration, as regards symptoms or signs of disease.—C. Healthy.

5. A. Describe the character of the heart's action.—A. Normal. B. What is the character of its rhythm?—B. Normal. C. What is the condition of the heart and blood vessels?—C. Healthy.

6. A. State the rate and other qualities of the party's pulse.—A. In a standing posture, 80; in a sitting posture, 76. B. Is it uniform, regular, and steady?—B. Yes.

7. Is the party habitually free from any tendency to cough, expectoration, difficulty of breathing, or palpitation?—Yes.

8. Are the functions of the brain, the muscular and nervous systems in a healthy state?—Yes.

9. Are the functions of the abdominal and urinary organs in a like healthy condition?—Yes.

10. Is the party exempt from any predisposition, either hereditary or acquired, to any local or constitutional disease?—Yes.

11. Is the party now entirely free from any disease or disorder whatever?—Yes.

12. Do you believe the party to be sober and temperate in all the habits of life?—Yes.

13. Have the party's parents, brothers, or sisters, been exempt from pulmonary or other disease hereditary in their nature?—Yes. Mother died *in* cancer.

14. A. Has the party ever had severe injury or illness? B. If so, has it had any effect upon the constitution?—A. B. Lost leg below knee-joint; healed rapidly; and has never had the slightest inconvenience from it, except in walking.

15. Do you consider the applicant's life safely assurable; and do you recommend that a policy be granted? ———.

Dated June 10, 1867.

(Signed) JOHNSON ELIOT,
Medical Examiner.

Questions to be answered by the physician of the party to be insured.

The physician is requested to give any additional information which he may possess, even though it be not embraced in the answers to the queries annexed.

1. A. How long have you known Albert W. Bailey? ———. B. How recently have you attended the party professionally; and for what disease?—B. No.

2. Is the party now in good health?—Yes.

3. A. Is the party sober and temperate, and has he always been so?—A. Yes.

4. A. Has the party, or his family relatives, been afflicted with pulmonary complaints, scrofula, insanity, or any constitutional or hereditary diseases?—A. Mother died of cancer. B. Is there such a personal or family predisposition?—B. No.

5. Has the party at any time been afflicted with insanity, gout, rheumatism, dropsy, palsy, apoplexy, disease of the heart, aneurism, rupture, fistula, spitting of blood, affection of the lungs, or other viscera, or with any organic disease?—No.

6. A. Are the functions of the brain, nervous and muscular systems, the lungs, heart, the abominal and urinary organs in a healthy condition?—A. Yes. B. Has the party ever had disease of any of these organs; if so, which?—B. No. C. Has the party had any serious injury or illness; if so, what effect has it had on the constitution?—C. Lost leg.

7. Is the constitution of the party healthy, and are the habits and circumstances such as to render the life safely assurable?—Yes.

Dated June 10, 1867.

(Signed) JOHNSON ELIOT.

EXH. C.

Certificate of a friend of the person to be insured.

I certify that I have been personally acquainted with Albert W. Bailey, of Washington, during the last four years, and do believe that his

habits of living are temperate; that he is now in good health, and does ordinarily enjoy good health; and that I know of no constitutional infirmity or other circumstances affecting him calculated to make an insurance on his life more than usually hazardous, excepting ———.

Dated at Washington, D. C., this tenth day of June, 1867.

(Signed) MRS. VON KAMECHER.

(Indorsed:) No. 20783. Phœnix Mutual Life Insurance Company of Hartford, Conn. Date of policy, June 12, 1867. Sum assured $[4,000, erased]6,000. Term of life; applicant, Elizabeth W. Bailey; relationship, ———; on life of Albert W. Bailey; residence, Washington, D. C.; occupation, clerk; age, 24; place of birth, N. Y.; date of application, June 10, 1867; premium, extra, $[78 46, erased] 117 60; agent, H. A. B., at D. C.; received 12 day of June, 1867. ☞ Agents are requested not to fill the above blanks. Changed to $6,000 in favor of Elizabeth W. Bailey, wife, June 19, 1867. ——— ———, M. D., consulting physician.

20 *Exhibit D to bill.—Filed June* 1, 1868.

No. 20783. $6,000.

The Phœnix Mutual Life Insurance Company of Hartford, Connecticut.

Annual premium, $117 60. This policy of assurance witnesseth that The Phœnix Mutual Life Insurance Company of Hartford, Conn., in consideration of the representations made to them in the application for this policy, and of the sum of one hundred and seventeen dollars and sixty cents to them duly paid by Mrs. Elizabeth A. Bailey, wife of Albert W. Bailey, and of the annual payment of a like amount on or before the twelfth day of June in every year during the continuance of this policy, do assure the life of the said Albert W. Bailey, of Washington, District of Columbia, for the sole use of his said wife, in the amount of six thousand dollars, for the term of his natural life.

Sum insured, $6,000.

Age, 24 years. And the said company do hereby promise and agree to pay the amount of the said insurance at their office in the
21 city of *of* Hartford, Conn., to the said assured, for her sole use, if living, in conformity with the statute, and if not living, to their children or their guardian for their use, in ninety days after due notice and proof of the death of the said party whose life is hereby insured; any indebtedness to the company on account of this policy being first deducted therefrom.

And the said company do further promise and agree that if, after having received not less than three (3) annual premiums, this policy shall be surrendered while in force, a new policy will be issued for the whole amount of even dollars of premiums received by the said company, (subject to any indebtedness on account of premiums,) without subjecting the assured to any subsequent charge, except the interest annually in advance, on all indebtedness on this policy.

Term, life. This policy is issued and accepted by the assured upon the following express conditions and agreements:

First. If the said Albert W. Bailey shall at any time during the
22 continuance of this policy, without the consent of the said company previously obtained in writing, visit any part of the Western Hemisphere lying between the Tropics, or of the Eastern Hemi-

sphere between the 36th parallel north and the Tropic of Capricorn; or engage in the manufacture or transportation of gunpowder or fireworks, or in submarine operations, or in any military or naval service whatsoever, (the militia not in actual service excepted,) or in case he shall die by the hands of justice, or in consequence of a duel, or of the violation of any law of these States, or of the United States, or of any other country which he may be permitted under this policy to visit or reside in; or if any of the declarations or statements made in the application for this policy, upon the faith of which this policy is issued, shall be found in any respect untrue, then, and in every such case, this shall be null and void.

Secondly. If the said premiums shall not be paid at the office
23 of the company in the city of Hartford, Conn., or to an agent of the company, on his producing a receipt signed by the president or secretary, on or before the date above mentioned, then, and in every such case, the said company shall not be liable for the payment of the sum assured, or any part thereof, and this policy shall cease and determine.

Thirdly. In every case when this policy shall cease and determine, or become or be null and void, all payments thereon shall be forfeited to this company.

This policy to take effect when countersigned by H. A. Brewster, agent, at Washington, D. C.

In witness whereof the said Phœnix Mutual Life Insurance Company of Hartford, Conn., have, by their president and secretary, signed and delivered this contract this 12th day of June, one thousand eight hundred and seven.

E. FESSENDEN, *President.*

——— ———, *Secretary.*

24 *Exhibit E.—Filed June* 1, 1868.

No. 21274. $4,000.

The Phœnix Mutual Life Insurance Company of Hartford, Connecticut.

Annual premium, $78 10. This policy of assurance witnesseth that The Phœnix Mutual Life Insurance Company of Hartford, Conn., in consideration of the representations made to them in the application for this policy, and of the sum of seventy-eight dollars and forty cents, to them Sum insured, $4,000. duly paid by Mrs. Elizabeth A. Bailey, wife of Albert W. Bailey, and of the annual payment of a like amount on or before the fifteenth day of July in every year during the continuance of this Age, 24 years. policy, do assure the life of the said A. W. Bailey, of Washington, District of Columbia, for the sole use of his said wife in the amount of four thousand dollars, for the term of his natural life.

And the said company do hereby promise and agree to pay
25 the amount of the said insurance at their office, in the city of Hartford, Conn., to the said assured, for her sole use, if living, in conformity with the statute, and if not living, to their children, or their guardian for their use, in ninety days after due notice and proof of the death of the said party whose life is hereby insured; any indebtedness to the company on account of this policy being first deducted therefrom.

And the said company do further promise and agree that if, after hav-

ing received not less than three (3) annual premiums, this policy shall be surrendered while in force, a new policy will be issued for the whole amount of even dollars of premiums received by the said company, (subject to any indebtedness on account of premiums,) without subjecting the assured to any subsequent charge, except the interest annually in advance on all indebtedness on this policy.

Term, life.

This policy is issued and accepted by the assured upon the following express conditions and agreements:

26 First. If the said Albert W. Bailey shall at any time during the continuance of this policy, without the consent of the said company previously obtained in writing, visit any part of the Western Hemisphere lying between the Tropics, or of the Eastern Hemisphere between the 36th parallel north and the Tropic of Capricorn, or engage in the manufacture or transportation of gunpowder or fireworks, or in submarine operations, or in any military or naval service whatsoever, (the militia not in actual service excepted,) or in case he shall die by the hands of justice, or in or in consequence of a duel, or of the violation of any law of these States, or of the United States, or of any other country which he may be permitted under this policy to visit or reside in, or if any of the declarations or statements made in the application for this policy, upon the faith of which this policy is issued, shall be found in any respect untrue, then, and in every such case, this policy shall be null and void.

27 Secondly. If the said premiums shall not be paid at the office of the company, in the city of Hartford, Conn., or to an agent of the company, on his producing a receipt, signed by the president or secretary, on or before the date above mentioned, then, and in every such case, the said company shall not be liable for the payment of the sum assured, or any part thereof, and this policy shall cease and determine.

Thirdly. In every case when this policy shall cease and determine, or become or be null and void, all payments thereon shall be forfeited to this company.

This policy to take effect when countersigned by H. A. Brewster, agent, at Washington, D. C.

In witness whereof the said Phœnix Mutual Life Insurance Company of Hartford, Conn., have, by their president and secretary, signed and delivered this contract, this 15th day of July, one thousand eight hundred and sixty-seven.

E. FESSENDEN, *President.*

——— ———, *Secretary.*
——— ———, *Agent.*

28 *Affidavit Henry D. Seymour.—Filed Feb'y* 15, 1868.

DISTRICT OF COLUMBIA, *County of Washington:*

On this 14th day of February, A. D. 1868, before the undersigned, a notary public, personally appeared Henry D. Seymour, who being duly sworn, deposes and says that he was acquainted with Albert W. Bailey, late of Washington City, deceased; that said Bailey had at the time of his examination for an insurance on his life in The Phœnix Mutual Life Insurance Co., and for a period of 11 months prior to that time, an habitual cough, attended with other symptoms of confirmed consumption; that the general health of said Bailey during such time was very bad; that said Bailey had undergone an amputation of one of his legs, which occasioned him much suffering; and furthermore, that Mrs. Eliza-

beth Von Kamacher knew well and perfectly the condition of said Bailey, both before and at the time of his examination.

HENRY D. SEYMOUR.

Sworn & subscribed to before me this 14th day of Feb'y, 1868.
[SEAL.] THO'S J. MYERS,
Notary Public.

29 *Affidavit of Henry A. Brewster.—Filed Feb'y* 15, 1868.

In the supreme court of the District of Columbia.

PHŒNIX MUTUAL L. I. Co. *vs.* E. W. BAILEY. } 1188, equity dock, 8.

DISTRICT OF COLUMBIA, *County of Washington:*

On this 15th day of February, 1868, before the undersigned, R. J. Meigs, clerk of said supreme court, personally appeared H. A. Brewster, &, being duly sworn, deposes and says that he was in June, 1867 the agent of The Phœnix Mutual Life Insurance Company of Hartford, Conn., and as such agent received the application of Albert W. Bailey, hereto annexed, for insurance upon his life: that the questions contained in the application were proposed by this deponent to the said Bailey, and the answers of the said Bailey thereto were correctly written down by this deponent upon the said form of application hereto annexed, and the same was then signed by the said Bailey
30 in the presence of this deponent, and witnessed by this deponent.

This deponent further says that the certificate on said application, purporting to be signed by Mrs. Von Kamecher, was signed by her in the presence of this deponent, and she is the same person to whom the policy was issued, upon the life of said Albert W. Bailey, as his wife, Elizabeth A. Bailey.

HENRY A. BREWSTER.

Sworn and subscribed before me this 15th Feb'y, 1867.
R. J. MEIGS, *Clerk.*

31 *Answer of def't, Elizabeth A. Bailey.—Filed Feb'y* 15, 1868.

In the supreme court of the District of Columbia.

THE PHŒNIX MUTUAL LIFE INSURANCE COMpany *vs.* ELIZABETH A. BAILEY. } No. 1188, equity docket 8.

The answer of Elizabeth A. Bailey to the bill of complaint of The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, against her in chancery exhibited.

This defendant, now and at all times saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, or other imperfections of said bill of complaint contained, for answer thereunto, or unto so much thereof as said defendant is advised is material for her to make answer unto, answering saith:

32 She admits that said complainant was a corporation chartered

by the legislature of Connecticut, and in the exercise of its business of insuring lives had, prior to the month of June, 1867, established an office in the city of Washington, and had there an agent, H. A. Brewster, as charged in the bill of complaint. Defendant further admits that on the 10th day of June, 1867, one Albert W. Bailey applied to the agent of said company, at Washington, D. C., for insurance upon his life for $4,000, and that in response to questions addressed to him by the said agent made the statement of which a paper purporting to be a copy is annexed to the bill, marked Exhibit "A;" and that said A. W. Bailey was examined by the physician, who made the statement of which a paper purporting to be a copy is annexed to the bill, marked Exhibit "B;" and that said A. W. Bailey did name as his intimate friend
33 Mrs. Von Kamacher, the defendant herein; and defendant admits that she signed the certificate of which a paper purporting to be a copy is annexed to the bill, marked Exhibit C.

Defendant admits that said certificate of said physician, and statements of A. W. Bailey and the defendant, were forwarded to the president of said company; and that thereon the two policies of insurance, amounting together to $10,000, were issued and delivered to the defendant, and the premiums thereon paid, as stated in the bill, in cash and premium notes.

Defendant admits that by said policies the complainant became bound to pay to the defendant, after the death of said Albert W. Bailey, the said sum-total of $10,000.

The defendant admits that the complainant would not have issued said policies of insurance without the statements of A. W. Bailey
34 and herself, and the certificate of the company's examining physician; and that such statements and certificate are required in the usual practice of life insurance companies, in order to form a correct judgment.

The defendant says she has no information as to whether the said A. W. Bailey was informed, when the questions were proposed to him, that any untrue answers, or any suppression of facts in regard to his health, habits, or circumstances, would vitiate the policies of insurance and forfeit the payments thereon.

The defendant admits that said A. W. Bailey had lost a leg in the military service, but denies that the wound was discharging; on the contrary, she avers that the complainant was informed of such loss, and that at and after said insurances were effected it was and remained a healthy stump until his death.

Defendant avers that the original statements and certificate, of
35 which papers purporting to be copies are filed with the bill of complaint, and marked Exhibits A, B, & C, are in possession of the complainant, and she therefore does not admit the correctness of the said copies thereof.

The defendant avers that she is informed and believes that the statements made by said Albert W. Bailey, marked Exhibit A, if a correct copy thereof, and his answers therein are true. She avers that her statement, marked Exhibit C, if corret copies, and the answers therein were true. The defendant further avers that she is informed and believes the certificate of the physician, marked Exhibit B, is a true and correct statement.

The defendant denies that said A. W. Bailey, when said statements and certificate were made, (marked Exhibits A, B, & C,) had consumption or other disease of the lungs. She denies that he had an habitual cough, or that he was addicted to the use of spirituous liquors

36 habitually and to great excess. She asserts the fact to be that he was a temperate man.

The defendant denies that said A. W. Bailey, some months before the issuing of said policies, applied to the agent of the Equitable or any other insurance company, and was rejected by its medical examiner; that he went to the Equitable and got a book, but never returned to that office, but at Brewster's repeated requests insured in the Phœnix, as above stated. The defendant denies the allegation in the bill that said A. W. Bailey was in bad health when his application for insurance was made to complainant, and she denies all knowledge of his bad health at that time or before.

She denies the allegations of untruth and fraud made in the bill of complaint, and avers that her statement, if correctly copied, marked Exhibit C, was true and made honestly and in good faith to said complainant.

She denies that the medical examination of said A. W. Bailey
37 was made at her house, or that she procured it to be made there.

She further denies that she did, by management during such examination, aid her said husband in imposing upon and deceiving the complainant or said examining physician. The defendant denies that the health of said A. W. Bailey rapidly declined after said insurances were effected. She admits his death, in October, 1867, of rapid consumption.

The defendant denies that she neglected or ill-treated her said husband during his last illness, and she avers that she did all for him, and supplied his wants and wishes tenderly and lovingly until his death.

Defendant admits that she holds the complainant bound to pay her said insurances of $10,000, which they have hitherto utterly neglected and refused to do, and which they still refuse, thus compelling
38 her to proceed to suit to enforce the payment of her just and legal claim.

Defendant denies any intent or attempt to assign said policies of insurance.

And whereas all and singular the allegations and equities of the said bill have been fully denied or answered, said defendant prays to be hence dismissed, with her reasonable costs, &c., without this, &c.

MRS. ELIZABETH BAILEY.

DISTRICT OF COLUMBIA, *County of Washington, sct:*

On this 15th day of February, 1868, A. D., personally appeared Elizabeth A. Bailey, and makes oath that the matters stated in the foregoing answer of her own knowledge are true, and those stated on information and belief she believes to be true. R. J. MEIGS, *Clk.*

39 *Replication to answer of def't.—Filed Feb'y* 24, 1868.

In the supreme court of the District of Columbia.

PHŒNIX MUTUAL LIFE INSURANCE CO. OF Hartford, Conn., *vs.* ELIZABETH W. BAILEY. } 1188, equity docket 8.

The replication of The Phœnix Mutual Life Insurance Company to the answer of the defendant, Elizabeth A. Bailey.

This repliant, saving and reserving unto itself all and all manner of

advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be ready, to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

JNO. D. McPHERSON,
Sol'r for Compl't.

Order for hearing.—Filed May 26, '68.

PHŒNIX MUT. LIFE INS. CO.
vs.
ELIZABETH A. BAILEY.

Upon the motion of Jno. D. McPherson, esq., solicitor for complainant, this cause is hereby set down for hearing, and placed upon the equity calendar for June, 1868.

Interrogatories to be propounded to witnesses for compl'ts.—Filed Oct. 14, 1868.

In the supreme court of the District of Columbia.

THE PHŒNIX MUTUAL LIFE INSURANCE COMpany of Hartford, Connecticut,
vs.
ELIZABETH A. BAILEY.
} 1188, equity docket 8.

Interrogatories to be proposed to Andrew Van Dyke, Sidney Clarke, Valantine Sales, Willis Sumner, J. C. Cooley Babcock, of Oswego, New York.

1st. What is your name, age, occupation, and residence?

2d. Were you acquainted with Albert W. Bailey, formerly of Oswego, New York, and at one time a soldier in the Army engaged in suppressing the rebellion, and afterwards, having lost a leg in battle, a clerk in one of the Departments at Washington? If yea, state what acquaintance or knowledge you had of said Bailey?

3d. Were you acquainted with the father of said Bailey? If yea, when and how long you knew him, and whether you knew him at the time of his death?

4th. State the particulars of the last illness of the said Mr. Bailey, senior, as far as to show the nature of the complaint of which he died. State what was the disease of which he died. And state also what opportunity you had of knowing the nature of that disease.

5th. What was the age of the said Bailey, senior, when he died? If you do not know exactly, state it as nearly as you can judge.

6. Were you acquainted with either of the grandparents of the said Albert W. Bailey; and do you know of what disease either of them died and at what age? If so, state it, and state your means and opportunities of knowing the facts which you state.

7th. Have any of the parents, brothers, or sisters of the said Albert W. Bailey been afflicted with pulmonary or scorfulous or other
43 constitutional disease? If yea, state what disease, and who were so afflicted, and the particulars thereof, as far as you know.

J. D. McPHERSON,
Sol'r for Compl't.

44 *Depositions for complainant.*

In the supreme court of the District of Columbia.

PHŒNIX INS. CO.
vs.
ELIZABETH A. BAILEY. } No. 1188, in chancery.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Be it remembered that, on this 28th day of April, in the year of our Lord one thousand eight hundred and sixty-eight, I, Mahlon Ashford, an examiner in chancery, did cause to be personally present, at my office, No. 2, Columbian College Law Building, in the city of Washington, in said district, Henry A. Brewster, Henry D. Seymour, & others, to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the District of Columbia, wherein Phœnix Mutual Life Insurance Co. is complainant, and Elizabeth A. Bailey is defendant.

45 *Deposition of Henry A. Brewster for defendant.*

And the said Henry A. Brewster, being about the age of 50 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter at issue in said cause, I did carefully examine said Henry A. Brewster, and he did thereupon depose, testify, and say as follows:

In answer to questions by Mr. McPherson:

I am agent of The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, and have an office and do business in the city of Washington, D. C. I have been their agent in Washington since October, 1863, with the exception of an intermission of about six months. I knew Albert W. Bailey in his lifetime. I received from him an application for insurance on his life. A lady came to my office, saying Mr. Bailey wished to insure his life, and desired me to go to her boarding-house at a certain hour of the day, to receive his application.
46 The lady's name I do not now remember, but I afterwards knew her as Mrs. Bailey, the defendant in this suit. I went to the boarding-house, which I think was on E street, and there I saw Mr. Bailey. The questions were put, and the application made in the usual form. I had with me a printed form of the application. I put the questions in that form, and I wrote the answers, and he signed it, and it was witnessed by me. This is the application.

(Witness produced paper hereto annexed, marked H. A. B., No. 1.)

The questions and answers with Bailey's signature are contained on the first page of this paper. I put to him all the questions contained in that page, and the answers are written precisely as he gave them. The paper is precisely as it was then, so far as I can observe. The questions contained in the paper designated as "Certificate of a friend

of the person to be insured," on the back of the application, were put by me to the person who signed it, and the answers to the questions were written by me as they were given, and the paper was signed
47 by the lady whose name is signed to it in my presence. She is the same who first came to my office, and whom I afterwards knew as the defendant in this cause. The certificate was filled up by me in accordance with her answers to my questions, and was afterwards signed by her. The application was forwarded to the principal office, and the policy was sent from there to me, and I delivered it, I think, to her. After the application was made, and before the policy was issued, there came to me a request, I think from Mrs. Bailey herself, to have the policy issued to her as the wife of the applicant. I think the request was verbal. She, Mrs. Bailey, made the request to me personally, at my office. The policy was made out in accordance with her request. Mrs. Bailey paid the premium herself. The transaction in the whole matter was principally with Mrs. Bailey, and I considered her request sufficient to change the policy as stated. There was subsequently another policy issued on the life of Albert Bailey, which was done at the request of Mrs. Bailey. I think she paid the premium on it.
48 I think there was an examination made the second time, and that a certificate came to the office from Dr. Eliott.

I don't know that I had any other transaction or interview with Mrs. Bailey, in regard to this matter, in the lifetime of Mr. Bailey. I remember giving to Mr. Wise the amount of the premium that had been paid, less the earned premium, and authorizing him to refund it to Mrs. Bailey. This was in the lifetime of Mr. Bailey. I did this because it had been reported to me that he was not temperate, as represented in his application. My recollection is, that the first application was for $4,000 insurance, but afterwards Mrs. Bailey came to me with the money and the request that the insurance should be increased to $6,000.

Cross-examined by Mr. Edwards:

Both policies were issued upon the same application. I presumed they were issued by the president of the company. The request from Mrs. Bailey to have policies issued in her name was made before
49 their issuance. I think I am positive that the insurance was first solicited by Mrs. Bailey, as stated by me. I don't remember that any one was present when the application was filled out, except Mr. Bailey and the defendant. I have no personal knowledge that the premium handed to Wise by me was ever tendered to Mrs. Bailey or to Mr. Bailey, nor have I any personal knowledge of the habits of Mr. Bailey. The amount I authorized to be tendered I supposed to have been correct. It may not have been. I don't recollect requesting Mrs. Bailey to have the first policy increased to $6,000, and she stating that she did not have the money at the time, and my saying that it made no difference; that I would trust her a short while, or any such conversation. I cannot call to mind any conversation with Mr. Bailey in which he spoke of seeking insurance in The Equitable Insurance Company, and my requesting him to insure in The Phœnix Mutual. I may have shown Mr. Bailey some books when he was in my office, but I cannot call
50 to mind any such transaction. I think that I went to Mrs. Bailey's house with Dr. Eliott. I have no recollection of telling Mrs. Bailey to insure, and that, if Mr. Bailey should die, the company would pay the money; and that, if it came to me, I would advise her how to invest it to the best advantage. I have no recollection of giving Mr.

Bailey any tracts at my office. I have recollection of calling on Mr. Bailey after he was insured.

(Signed) H. A. BREWESTER.

Sworn to and subscribed before me this 28th day of April, 1868.

(Signed) M. ASHFORD, *Examiner.*

And thereupon the complainant produced as a witness one Henry D. Seymour.

51 *Deposition of Henry D. Seymour for complainant.*

And the said Henry D. Seymour, being about the age of 35 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter at issue in said cause, I did carefully examine said Henry D. Seymour, and he did thereupon depose, testify, and say as follows:

In answer to questions by Mr. McPherson:

I knew Albert W. Bailey in his lifetime. I think I made his acquaintance in July, 1868. We boarded at Mrs. Von Komacher's, corner of 10th and E sts. She afterwards Mr. Bailey. I think I boarded there about six weeks altogether. Mr. Bailey's health was very bad all that time. He had lost his leg, and that gave him a great deal of trouble. I used to see him afterwards nearly every day in the Treasury Department. We were both clerks there. He used to complain very much of his leg, and especially of its paining him in going up
52 and down stairs. He also complained of his chest, and had a cough, and looked as if he was consumptive. He appeared to cough considerably after any exertion, as in going up and down stairs. He had this cough all the time I knew him, sometimes worse than at other times. I can't say that he coughed so much as to particularly attract my attention. It would have done so if I had not known him. He was always ailing and complained of being unfit for duty. He was sometimes absent for a day or so from the office, and assigned as a cause his sickness. He was absent more towards the last. He was in bad health when I first knew him, and got worse all along after that.

Cross-examined by Mr. Edwards:

I have been a clerk in the office of the Treasury since August, 1866. Before that I was in the Paymaster General's Office. I never practiced medicine; I knew something about it. I don't know what disease Mr. Bailey died of. I did not see him for some time before his death,
53 a month, I suppose. I never made any medical examination. I formed my opinion of his health from his appearance. I can tell from appearance whether a man is consumptive or not.

I have no prejudice against Mrs. Bailey. I never offered to sell her any furniture, and because she would not buy it tell her I would go to the company, and that they would give me $500 to testify against her. I never spoke to her about it.

(Signed) H. D. SEYMOUR.

Sworn to and subscribed before me this 28th day of April, 1868.

(Signed) M. ASHFORD, *Examiner.*

Deposition of James N. Callan for complainant.

And the said James N. Callan, being about the age of 30 years, and being by me first duly sworn to testify the truth, the whole truth,
54 and nothing but the truth touching the matter at issue in said cause, I did carefully examine the said James N. Callan, and he did thereupon depose, testify, and say as follows:

In answer to the questions by Mr. McPherson:

I knew Albert W. Bailey in his lifetime. My first acquaintance with him was in October or November, 1861. From that time until the fall of 1862, I saw him very seldom. We became intimate in the spring of 1864. He then became a member of the temperance organization of which I was a member and officer. In August, 1864, I engaged in the apothecary business, and continued in that business until April 23d, 1867. Mr. Bailey was a customer of mine. I was in the habit of furnishing him with medicines. Mr. Bailey also purchased medicines for the lady who afterwards became his wife. After the spring of 1864 I usually saw him two or three times a day; I met him casually. I don't think I met him more than twice by appointment. In June, 1867, we did not meet so often; but up to the latter part of May, 1867, I
55 lived next door to Mr. Becker's, where Mr. Bailey was a constant visitor. I was after that absent for a little while—say about 10 days.

Q. Please state what was the condition of Mr. Bailey's health in the latter part of May, or on or about the 10th June, 1867?

A. I should think Mr. Bailey's health, between the 1st of May and the 16th of June, 1867, was bad. He was evidently in the decline about that time.

Q. Did you speak with him on the subject of his health prior to the 10th June, 1867? and, if so, state what passed between you on that subject.

(Objected to.)

A. I had a conversation with him in April, 1867, when the premium of my life policy was becoming due. The company I insured in, being a mutual company, allowed me a commission through my father, its agent, on all policies I could get for the company, and I asked him to insure. He replied that he could not get insured, as he had been refused by The Equitable Life Insurance Company, No. 92 Broadway.
56 He said that Dr. Young, as examining physician for that company, had examined him, and had really alarmed him, by stating that his lungs were nearly gone, and that he himself felt that when the leaves of autum fell he should fall too.

Q. Did you know whether or not he was under medical treatment at or about the time, and if so, by whom, and what was the nature of that treatment?

A. Previous to that time he had been under medical treatment for pulmonary complaint by Dr. James T. Young. Dr. Young had also prescribed a wash for his leg, on which there was a running sore.

Adjournment until to-morrow at 3 o'clock.

(Signed) M. A.

MAY 7, 1868.

Met pursuant to adjournment, when the examination of the above witness was resumed as follows:

57 I saw Mr. Bailey very seldom after the 1st of May; I have

spoken with him on other occasions about his health; that when two or three of us were in conversation; I don't remember what particular was said at those conversations. Sometimes Mr. Bailey drank very hard; last spring, and in the summer of 1866, he drank very hard; he drank early in the morning, during the day, and late at night. In the fall of 1866 he informed me that he had reformed, and showed me a certificate of his having paid his dues in the temperance society. He kept it up one day, I think; I saw him drinking the next day.

Q. How long did he continue to drink after that?

A. I never knew him to stop drinking only for a day or so after that.

Q. How long prior to the 10th of June did you see him drinking, and to what extent?

A. I saw him drinking on the Sunday and Monday previous to the 10th of June; he was then drinking moderately; I mean he took four or five drinks in the course of an hour or two. We were playing
58 bagatelle together, and he took a drink at the end of each game; he always drank whiskey; he did not get drunk; I rarely saw him show his liquor; I knew of two places he was in the habit of resorting to; that was at Becker's, 487 10th street, and a place called Teutonia Hall, on Pennsylvania avenue; I have seen him at Becker's nearly every morning in the week, a little after sunrise; if he was not otherwise engaged, he would generally be there all day.

Q. What did he go there for?

A. He would go there to drink, and while there he was usually engaged in playing cards or bagatelle. Mrs. Von Komecher was aware of his frequenting that place before his marriage, and of his drinking there, and I think she tried hard to keep him away; she came there one morning about 7 o'clock and threatened Mrs. Becker, the wife of the proprietor, with prosecution for selling liquor to a sick man; I saw her there on another occasion, when she called him to her, and said he should not spend all his days there and Sunday too; this was, I
59 think, on a Sunday; I don't recollect, but think it was before their marriage. My only reason for thinking it was before their marriage is, that I was not about there but very seldom after the marriage, and saw but little of them.

(Answer objected to.)

Q. Had Mr. Bailey any cough?

A. Yes, sir.

Q. Was it habitual?

A. I can't say whether it was or not; he had a low hollow cough; he had lost his voice, and his cough was low; his voice was entirely gone, and he could not speak above a whisper.

Q. What period do you speak of?

A. About April or May, 1867; he did not cough much; he coughed more when he was drinking; I mean when he was actually drinking. I think it was about the first part of April, 1867, (about the 2d week,) that he spoke to me of his having been examined by Dr. Young.

(Objected to.)

Q. You stated yesterday that Mr. Bailey informed you that he
60 had been refused by The Equitable Life Assurance Company. Did he tell you upon what occasion he was refused?

A. He said about two months before.

Q. Did you furnish him with any medicine while he was under treatment by Dr. Young; if so, what was the nature of the medicines?

A. I did; they were medicines used for pulmonary complaints. I never saw his leg, and don't know the condition of its wound, except

that he told me it had a bad smell, and he got of me a disinfectant to destroy that smell.

Adjourned until to-morrow, the 8th day of May, 1868, at 2 o'clock, of which the parties, by counsel, had notice.

(Signed) M. ASHFORD, *Examiner.*

MAY 8, 1868.

Met pursuant to adjournment, when the examination was further adjourned by consent of counsel until to-morrow the 9th day of May, 1868, at 10 o'clock.

(Signed) M. ASHFORD, *Examiner.*

61 MAY 9TH, 1868.

Met pursuant to adjournment, when the examination of the above-named witness was resumed, and upon his cross-examination he did testify as follows, viz:

In answer to questions by Mr. Deveridge:

I do not know what time Mr. Bailey's marriage took place. I sold my apothecary store, 485 10th street, between D and E streets north, on the 23d of April, 1867. I kept a room in the house where the store was until after the June election in this city. I then went to reside with my father, on E street, near 7th street west. I left there about the middle of July, 1867. I then went to the Brandreth House, corner of Canal street and Broadway, New York City, to reside. I came back to Washington about the first of August, and remained here about three weeks. I then returned to New York, and took up my abode at Earl's Hotel, corner of Canal and Elm streets. Since my residence in New York I have been engaged in the wholesale perfumery and blacking business, No.

62 36 Church street, New York, in the house of Robert Farley, jr., & Co., a New York branch of the Boston house. I was first spoken to about this cause last fall by John H. Wise, of this city, while I was here as traveling agent for the New York *hous.* I don't know that he is a detective, (this man Wise;) he used to be a constable here, and I think he was at one time a bailiff of the court, and also at one time engaged at the jail. He left a note for me to call and see him about an insurance case, and I supposed it related to the Becker case.

(Mr. Appleby objects to the witness stating any conversation between himself and Mr. Wise.

Mr. Davidge objects to witness stating his supposition.)

Mr. Wise asked me if I knew Mr. Bailey, who had died here shortly before. I told him that I did. He asked me if I knew anything as to the state of his health the spring before. I told him that I though his health was bad that spring. He then inquired as to my knowl-

63 edge of his habits for drinking. I told him that I thought he had drank to such an extent as to hasten his death. He then told me that there was a life insurance case that was likely to come into court, and that my testimony might be wanted, and requested my address, which I gave him. This was about all that passed, except that he said that the company had offered to return to Bailey's wife the premium on the policy. He did not say when the offer was made. I next saw Wise about a week ago. The first interview with Wise took place last Thanksgiving Day, the 28th November, I think. After seeing Wise, and on my return to New York, in the month of December, 1867, Mr. Fessenden, the president of the company, called on me at 36 Church street, in

company with the New York agent of the company, Mr. DeWitt, and requested a few minutes' conversation with me on the subject of this case. I told him I was then busy, and that if he would appoint a time I would meet him at the office of the company, on Broadway. He appointed a time, and I called and spent, perhaps, an hour or more
64 with him. He showed me what purported to be an application of Mr. Bailey for life insurance, and requested me to tell him all I knew concerning Bailey's habits and condition of health. I told him in substance, what I have stated here in my testimony. Mr. DeWitt was not present, but was in an adjoining room, not near enough to hear the conversation. Mr. Fessenden took notes of what I told him. In January, of this year, I saw one of the directors of the company. He called at No. 36 Church street, in company with Mr. DeWitt. He asked me if I could give him the names of any persons in Washington (as he was coming on here) from whom he could get information concerning the habits and condition of health of Mr. Bailey. I have forgotten the name of the director. He said he wanted the name of the nearest neighbor, to whom he could speak concerning the subject. I gave him the name of C. Mades, next-door neighbor, corner of 10th street, and of W'm J. Gross, a tinner, on 11th street, near F street. Except the letter of Wise, before spoken of, I have never received a letter from any
65 one in reference to this case. I know John B. McLelland, of this city, very well. He is a clerk in the Adjutant General's Office. I have not seen McLelland since the 12th of November last, when he informed me that Bailey was dead, and was insured for $10,000. We had some conversation about Bailey, being mutual friends, but our conversation had no relation to this case. That was the first time I saw McLelland after Mr. Bailey's death. Mr. McLelland never showed me any letter, held out any intimation or promise of reward for services in resisting the claim of Mrs. Bailey against the complainant. No one in behalf of the complainant has approached me with any intimation or promise of reward or the payment of my expenses as a witness in this case. I supposed that Mr. Fessenden would say something to me for keeping me a half day away from my business, but he said not a word about it. I have not received one cent from any one in reference to this case. I paid my own expenses on here from New York. I came on to attend my brother's wedding. In May and June, 1867, I was very seldom about the place where I had kept store. I was only there at
66 bedtime at night. After I sold out my store I should think I was in Becker's, perhaps, twice a week. I generally went in there to see him every time I passed. Sometimes I would go in there to get a match to light my gas. He rented of me, and I also went there to get the rent; the rent was due monthly, but he sometimes paid it in small sums, and at different times. I have drank at Becker's bar. I generally drank beer. I drank there more on election day than any other. I very rarely took a drink there after I sold out. I think it was on election day that we (Bailey and I) played bagatelle together, and he took the four or five drinks of which I have spoken. We were playing for drinks, and I was beaten every time. I think we played five games. I drank weiss-beer at the end of three of the games, and he drank at the end of every game. I was at Becker's a good deal before I sold out my store. I was there as many as six times, I suppose, in the course of the day. I would go there to see them play, to see what was going on, and
67 to read the papers. Becker took all the papers. He kept a brewery. I did not drink every time I went there.

Q. In April, 1867, did you not consider Mr. Bailey insurable?

(Objected to.)

A. I am not a competent judge.

Q. Did any facts, the subject of your observation, make you think that he was not an insurable man?

(Objected to.)

A. His health at that time appeared to be better than it had been a month or two previous to that time. There were no facts, the subject of my preception, to make me think he was not insurable at that time. He had stopped taking his medicine, and his voice had come back, and he was not then drinking as he had been. I always thought that drinking affected his cough and voice.

I don't know whether Mr. Bailey was in any public office in the spring of 1867 or not. He had been in office. After I had broken
68 up the apothecary store my opportunities of seeing Bailey were casual. I don't remember that I ever met him by appointment after that time. I am not positive how often I saw him at Becker's after I had sold out. I think that I saw him there every time that I passed there.

I seldom passed Becker's at all in the daytime. I have also seen him at Teutonia Hall, on the south side of Pennsylvania avenue; I can't say that I saw him there in May or June. I never saw him anywhere else during those months except on the street. We would salute each other, and sometimes we would stop and talk together. I cannot recall any occasion during the months of May and June when Bailey took a drink in my presence, at Becker's, except on election day, when we played bagatelle, as I have stated.

I can't specify any particular conversation I had with Bailey during the month of May and down to the 10th of June, 1867, except from casual observation. I can recall nothing that occurred in the
69 month of May and down to the 10th of June that will enable me to say that in that period his habits were bad. It was about the second week in February that he was under medical treatment by Doctor Young. I think the doctor only attended him a short while; I don't think he saw him more than three times. Baily afterwards would take his medicine when he felt any use for it. When I had a room over the apothecary shop I rose very early. From there I would go to my father's, on E street, to breakfast, sometimes stopping at the barber shop. I think Baily went to Dr. Young's office, when he attended him. He was not confined to his room or bed.

When I had the conversation with Baily in April, 1867, when he spoke of Dr. Young's having examined him for life insurance, he did not specify any company that he had examined him for; he did not say that he had applied to The Equitable Life Insurance Com-
70 pany, or any other company; he did not say that The Equitable Life Insurance Company had refused him. He said that Dr. Young had examined him for his company, and had refused him; he did not say what that company was.

I did not mean to say in the spring and summer of 1867 Mr. Baily drank very hard; I did not mean to say that he drank early in the morning, during the day, and late at night. I meant to say that in the summer of 1866, and the spring of 1867, he drank very hard; of course he did not drink hard all the time; sometimes he would stop for a while.

The cough, to which I referred in my testimony, I first observed about the month of January or February, 1867; it lasted a month or two, but did not seem to hang to him, after a month or two, as an

habitual thing. I may have heard him cough once or twice
71 afterwards, but it made no impression on me. I had reason to believe that he was relieved from his cough, and had no reason to believe that he was not cured of it. It appears to me that it was in January that he lost his voice; it may have been sooner; that is, the loss of voice about which I have testified in chief. I never observed any loss of voice before or since that time. The loss of voice was, I think, a little previous to his cold, and accompanied it. This was the cold for which Dr. Young treated him.

NOTE.—Adjourned to be continued at 6 o'clock, before Examiner J. J. Johnson, by consent.

Met pursuant to adjournment, when the cross-examination of Mr. Callan was resumed by Mr. Davidge, when the witness deposes as follows:

I furnished medicines to Mr. Baily at different periods in the
72 fall of 1866 and the winter of the same year. I may have furnished him medicine after February, 1867, on one occasion. I think it was in February, 1867, that I furnished a disinfectant for his leg. It was not a wash I furnished for his leg, but a disinfectant of chloride of soda. I was most intimate with him about twelve months previous to his death, in October, 1866. For four or five months before October, 1866, I would meet him pretty often, but was not intimate. I would meet him in the neighborhood of the War Department before October, 1866. I was not living in the neighborhood of the War Department, but I think he was at that time. I don't know at what time he moved in the neighborhood of my apothecary store. The first time that I met him about Becker's was about October, 1866. Before that time I have no recollection of meeting him there. I met him at no particular place in the neighborhood of the War Department. I
73 would meet him in the daytime. I think I met him once at Woodley's at night. On all the other occasions I met him in the daytime.

I had some business at the Provost Marshal General's Office, and at the Adjutant General's Office; I would have business there three or four times a week; I would generally go up there about lunch-time, when the clerks were taking a recreation; I think he was employed somewhere up there in the Departments; sometimes I would remain up there an hour or so, and never less than half an hour; I would meet him frequently; I would see him sometimes twice while I was up there; these were casual interviews. I noticed at one time, in the summer of 1866, he looked as having been drinking, but was not drunk when I saw but had the appearance of having been drinking hard; I think for two days he looked as if he had been drinking; I judged only from his
74 appearance; though I had seen him drink a little, I had not seen him drink to excess. There were no other occasions, during the months I knew him intimately, prior to October, 1866, that he showed any symptoms of drinking too much. When I met him, I sometimes drank with him; I drank with him *I drank with him* two or three times during these months that I met with him in the neighborhood of the War Department. I can't recall having seen him drink but on one or two occasions, in addition to those I drank with him during the months prior to October, 1866. Before the time when I used to meet him in the neighborhood of the War Department I had not seen

him since May or June, 1864. He joined the "Good Samaritan's Division, No. 1," in the second quarter of 1864; I think in May or June that he joined. I left the Sons of Temperance August 31, 1864;
75 the Sons of Temperance met once a week. I don't think I saw him there more than twice after he joined; at that *I* time I only knew him. I had not seen him there for a couple of years. I saw him on no other occasion than at the Sons of Temperance, except once, when I met him at a lawyer's office. When I met him at the Sons of Temperance, he was on crutches; he had not then got his patent leg. Except the appearance of having been drinking in the summer of 1866, no facts came under my notice, prior to October, 1866, to indicate that Mr. Baily was an habitual drinker. In October, 1866, and down to April 23, 1867, I was keeping the apothecary shop. My business kept me a great deal about the store; I could not go far away from there. I have drank with him in Becker's. I think I should be safe in saying I have seen him take as many as ten or twelve drinks in the course of a
76 day; for a day or two, perhaps, he would be there constantly. Once or twice in the whole time, I saw him go there. I saw him talking at the bar with friends, and he took four or five big drinks of very bad whiskey. I did not drink whiskey; I drank weiss-beer. Except on these occasions, and election day, when we played bagatelle together, in June, 1867, I cannot speak, from my own observation, of the quantity or number of times he drank, and except, also, the occasion when I saw him drink ten or twelve times whilst playing bagatelle. I never visited him in his house; I never was in his room in my life. I didn't go to Becker's every day. If I was in the city, rarely two days elapsed without my going to Becker's. I did not see him every time I went there; I mean I did not see him every day I went there. I was there very rarely at night before ten o'clock. When I went at night, I would pretty generally meet him. I can't say that he drank every
77 night. I would see him sometimes taking a drink; sometimes talking and playing bagatelle. I don't think that I ever saw him, in all my life, to drink more than three or four times before breakfast. From what I actually saw of him, I would consider him a hard drinker. I do not mean a continuous drinker, but when he drank he drank hard. Sometimes he would come into Becker's, and sit down and talk, and parties would ask him to drink; he would refuse, and say he did not feel like drinking to-day. He was not what I would call an habitual drinker. One day he declined twice to drink because the liquor was bad. I don't know that I ever exchanged a word with Mrs. Baily in my life. There never was any difference between Mrs. Baily and myself. About Christmas, 1866, he was drinking but little, and also in January. I think he drank pretty hard from about the 20th of January to early in
78 February, when he caught more cold. He drank more freely in the month of March. Afterwards he got to drinking pretty hard. About the first of April he hauled up; he got scared. During the month of April he drank very seldom, and down to the time I gave up the apothecary shop.

Becker's place, where we used to go, was a very decent place. His wife came there previous to my giving up the store; it was before they were married; it must have been in the spring. Mrs. Baily was talking to Mrs. Becker. I was in my store when I heard them talking, and I walked several yards to see what was the matter. I think it was on a Sunday, when Mrs. Bailey said that he must not spend all his days and Sunday too, there. This was before I gave up the shop, I think. The other time Mrs. Baily went to Becker's was not on Sunday.

79 Mrs. Becker was sweeping out the bar-room, and Mrs. Bailey stood at the door and talked to her.

Re-direct:

Q. In your direct examination you said that Mr. Baily told you he had been refused by The Equitable Life Insurance Company; on your cross-examination you say that he did not name the company; how do you explain this?

A. He told me that he had been rejected by Dr. Young, and I knew that Young was examiner for that company.

Q. Is chloride of soda a fluid or wash?

A. It is a fluid; I did not apply it to Mr. Baily as a wash.

Q. You said you had seen him take ten or twelve drinks in a
80 day while playing bagatelle; was that on more than one occasion?

A. Only on one occasion; in the latter part of March and the first of April, he appeared to be more under the influence of liquor than I ever saw him before; it lasted only a few days.

Q. You said in your cross-examination that you had not been approached on behalf of the complainant with any intimation of reward. Have you been approached by any one? and, if so, state the circumstances fully.

A. I was met last night, near nine o'clock, by a man, to me a stranger; I have since ascertained that his name is Charles Ager; I think he lives on D street, near 12th; he met me and said that some person wanted to see me; I asked him who it was; he put his hand in his vest
81 pocket and took out a little memorandum, and showed me on it the names of Crittenden & Edwards, attorneys-at-law, No. 35 Louisiana avenue, and says, "They want to see you." "What do they want me for?" says I. He says, "Step outside and I shall tell you." We were at John Rooney's restaurant, corner of 13th and C streets, south of the avenue; I went outside; he asked me if I could not fix my evidence so as to make it appear that Baily was neither sick nor dissipated before the 10th day of June, and if I could do so I could have any amount of money I wanted; I told him I had gone in the case to tell the truth, and that no money could buy me; he then said, "I don't care for the truth, so long as I get the money." I told him that I had been examined, and thought it was pretty nearly through with; he then said, "That is all I want to know," and then went back into the
82 restaurant; he did not give me the card, but put it back in his pocket: I read the card.

(Signed) JAMES N. CALLAN.

Subscribed and sworn to before me this 9th day of May, 1868.

(Signed) M. ASHFORD, *Examiner.*

Adjourned until Monday, the 11th day of May, 1868, at 3 o'clock.

(Signed) M. ASHFORD, *Examiner.*

Deposition of William Mann.

MAY 11, 1868.

Met pursuant to adjournment, the solicitors in the cause being present, when the complainant produced as a witness one W'm Mann, a witness of lawful age, who being sworn, deposes and says as follows:

83 I knew Albert W. Bailey in his lifetime; I knew him when I boarded at the defendant's house; I can't remember the time I boarded there, but it was some time last year, and before Bailey was married to the defendant. I boarded there about two months; part of the time that I boarded there was in the winter. There were no leaves on the trees, and snow on the ground. I am 21 years of age. Sometimes I used to be in Mr. Bailey's company. Sometimes I would go down to Becker's restaurant and would be with him there. Sometimes I would go there as often as four or five times a week, and sometimes I would not be there more than once. I used to see Bailey drink at Becker's, and I have seen him intoxicated. Sometimes he would drink pretty hard, and sometimes he drank lightly. I never saw him there before four o'clock in the day. He used to drink there and play cards,
84 some or four of them. They used to drink around. I can't say how often he drank. I have seen him drink as often as a dozen times in the evening while playing cards for drinks. I have seen him intoxicated more than once. I have seen him as many as three times to my certain knowledge.

Adjourned until to-morrow, the 12th day of May, 1868, at 11 o'clock a. m., of which the counsel had notice.

(Signed) M. ASHFORD, *Examiner.*

MAY 12, 1868.

Met pursuant to adjournment, when the examination of the above-named witness was resumed, as follows:

Bailey's habits were the same as ever when I last saw him, and when I left Washington. The defendant knew of his habits. I know
85 she knew of them, because I have seen her go after him at Becker's when he was drinking. I know that she was after him, because I have been in the saloon, and she has called me out and asked me if he was there. I saw him lying on the settee on one occasion when I thought he was intoxicated, and the defendant was present. I can't say that I ever heard the defendant speak to Bailey about his drinking. I heard her say on one occasion that she was going down to that saloon, as she supposed he was down there drinking again. I heard her once ask him to stay away from there, and he promised her he would. She complained to him about going there. I also heard her complain to him once about his frequenting the concert saloon, and one night she stopped me in front of the Metropolitan Hall, and asked me if he was up there.

(NOTE by the examiner at the request of Mr. Davidge. Mr.
86 Davidge says: "I was obliged this morning to attend the criminal court to move to quash the indictment in the case of The United States against Leonard Huyck, in which case the court had required me to take my exception to the legal capacity of the grand jury finding the indictment at the present term. I was informed some days ago that the Surratt case would not be tried—for the trial of which case the criminal court met this morning—and believing that the court after disposing of the Surratt case, would adjourn, it became necessary *necessary* that I should remain in that court. The Surratt case was continued—as I supposed it would be—and on such continuation a motion was made to admit the prisoner to bail, which motion was laid over, after some discussion, until to-morrow morning at 9 o'clock. And as soon as I could get the ear of the court, and immediately after the motion for

bail was laid over, I presented the motion in case of Huyck,
87 which, after some discussion, was laid over until to-morrow morning at nine o'clock. I thereupon immediately repaired to the
of the examiner at ten minutes past twelve o'clock. In court this morning, I met Mr. Ashford at five minutes to eleven o'clock, and told him I had business in court which the district attorney would take up after the Surratt case was disposed of, and I objected to his proceeding to take evidence in this cause until I could attend. Finding now that, notwithstanding my objection, he has proceeded in my absence with the examination of the witness Mann, I hereby protest against the regularity of said proceeding, and I proceed to cross-examine the said witness, subject to this protest."

Mr. McPherson desires the examiner to note that at the adjournment on yesterday he understood Mr. Davidge to say that he could not be present at all to-day. Yet, notwithstanding this, upon the sug-
88 gestion of the examiner he waited some half hour before commencing the examination, and after closing with the witness he waited and detained the witness until Mr. Davidge came in. I did not understand Mr. Davidge on yesterday to waive his right to be present, but only to state his inability to be present.)

And thereupon the witness, upon his cross-examination, further deposes and says as follows:

I am a minstrel by profession, and have been engaged at Canterbury; I am now out of an engagement; I boarded with the defendant; I have not paid her for my board; I never borrowed money from her or from Bailey; she turned me away from the house; I have no disrespect for the lady; I did not blame her at all; she told me how she was circumstanced; after I left the defendant's house I met Bailey once at
89 Metropolitan Hall; I also passed him on the street on two or three occasions; these are the only occasions I recollect of seeing him after I left the defendant's house; it was about a week after I left defendant's house that I saw Bailey at Metropolitan Hall; he was sitting with a friend, and I was with a friend at a table in another part of the room; he came over and spoke to me, and asked me a single question and then went back to his seat; he was not with me more than a minute; I did not see him again that evening; I remained until the performance was out; I did not see Mr. Bailey at the close of the performance; he must have gone out before; when I met him on the street I simply nodded and said, "How do you do," and that's all; once he stopped and asked me if I got the money on my discharge papers; he talked with me a short while about the papers; he was talking to me about two minutes; it was in the forenoon, on E street, near his
90 house; the last time I ever saw him was when I passed him on the street on the occasion I have spoken of; as near as I can recollect, the last time I saw him was about two weeks after I stopped boarding with the defendant; I have never seen him since. About three weeks after I left the defendant's boarding-house I left Washington, and remained away in Baltimore about six months, when I returned to Washington, and when I returned Bailey was dead. It was about a week before I left the city that I met the defendant, and she asked me if Bailey was up-stairs. Mr. Callan first asked me to come here to testify—Mr. James N. Callan; he said that I knew Bailey and boarded with him, and they would want my testimony in the case, and he went with me to Mr. Appleby's office; he did not state to me that he had any interest in this suit; he said that he was called on as a witness himself.

I don't know a man named Wise. It was between one and two
91 o'clock, as near as I can remember, in the afternoon, that I saw Bailey lying on the settee, and thought he was intoxicated; it was about a month after I went to defendant's house to board; I came into the dining-room to get lunch, and started right out again; it was in the dining-room that he was lying down; I ate my lunch in the room; the reason I thought he was drunk was because he was lying limber, and I spoke to him and he did not speak to me; he was not asleep, he lay like a drunken man would, to all appearances helpless; the settee was right behind the door, and I saw him as I went in; I did not stop, but went over to the corner of the room diagonally opposite to him; I have no other reason for thinking he was intoxicated, except his peculiar position, the fact that he did not speak, and the fact that he was absent from his office that day; I did not see him again that day; I
92 was at dinner, but he was not there; I was not more than five minutes in the dining-room eating lunch; I paid more attention to the lunch than to Bailey; I saw him down in Becker's tight one night; I also saw him at Metropolitan Hall kind of inebriated; he was getting full; he was drinking. These are the occasions of having seen him intoxicated as spoken of in my examination-in-chief. When I saw him tight at Becker's I was there about an hour. I found Bailey there and left him there; he was drinking and playing bagatelle. I can't state the date of this occasion. I generally met him there every night I went there; I was not there every night. To my certain knowledge he, Bailey, used to go there every night, and sometimes not more than once a week. I used to go there to see them play cards. I drank nothing but beer. I sometimes played cards. I don't remember any one that was present the night I saw him tight at Becker's but Becker
93 himself. I understand Becker is dead. The night that I saw him drink a dozen times was a different night. I did not go to the performance that night, but went into Becker's about eight o'clock and stayed there till twelve o'clock, and Bailey was playing cards and drinking all the time. I went home and left him there, and about an hour after I went home I heard him come in. I knew it was him by his wooden leg. This was, I think, about two or three weeks before I left the boarding-house.

Re-examined:

I do not know that Bailey stayed away from Becker's a week, or three days, or one day at a time. I settled with Mrs. Bailey by assigning my discharge papers, and the claim agent who endorsed on them that so much was due to Mrs. Bailey, and he was to pay her when the money was collected. Mrs. Bailey expressed herself satisfied with this arrangement.

Cross-examined:

94 I have not got the money on the discharge papers. They told me that there were so many ahead of me that I would have to wait, and I got tired of waiting. I was a musician in the Army.

W'M F. MANN.

Sworn to and subscribed before me this 12th day of May, 1868.

M. ASHFORD, *Examiner.*

Deposition of Dr. W'm B. Magruder.

And thereupon complainant produced as a witness one Doctor W'm

B. Magruder, a witness of lawful age, who, being duly sworn, deposes and says:

I knew Albert W. Bailey in his lifetime; I prescribed for him professionally, but can give no dates, except that I know that it was after the defendant had seperated or was divorced from her former husband, Von Komecher. The first time Bailey came to see me he had
95 recently been on a frolic; I gave him such remedies as would get him in a condition to attend to his office and duties. He came there subsequently, complaining of chills; I examined him carefully and found that the chills were occasioned by constitutional irritation from lung disease; I treated him for that for some time, and discharged him as well as he could be; I prescribed for him several times after that, after he had been on frolics, which generally brought on these chills. Some time in the last part of last June I met Bailey and the defendant in company together, and she introduced him to me as her husband, and said they had been married about two weeks, and she asked me to prescribe for a bad cough which she said he had. I told her to send him to my office the next morning; he came, I think, the next morning. I examined him then and found that his lungs were very seriously diseased; prescribed for him; he came to see me two or three times a week for about three weeks; I did not think he improved, and told him so, and did not see or hear anything more of him until I heard
96 of his death. When Bailey came to me first with the chills, I told him that his lungs were diseased, but they could be cured if he strenuously took care of himself; I told him the chills proceeded from the diseased condition of his lungs. When he left my treatment the first time, all had been done that medicine could do, and he was as well as a man of his constitution and habits could be. I considered his disease curible; I examined him carefully with percussion and with the *tethescope*, and did not consider the disease as incuriable, and so informed him. There was a slight irritation of the *mucus membrane* of the lungs. *I* was not a case of tubercular consumption, and, in my opinion, it did not turn out such; but I did not examine him so carefully the second time. I would, however, say it was consumption of the lungs. When I saw him in June, I considered the case utterly hopeless. The first time I saw him he had a slight cough. The interval between the time I first prescribed for him and the last time
97 I treated him, in June last, was a year or 18 months. The time that I first treated him for chills was two or three weeks after I first knew him, and prescribed for him. His disease operated slowly. When I saw him in June, I cannot say from the nature of the complaint that any sudden change had taken place in him; he was emaciated, but not much so; his complexion was not clear, and he breathed thickly and quickly. I knew nothing about his habits, except professionally; he never told me what they were; he told me he had been on a frolic the first time he called on me. I knew Mrs. Von Komecher before she was divourced from her husband, and Bailey at that time boarded at her house, and they seemed to be intimate. I have met them in the street together. When they met me in June, they were walking arm in arm, and they said she had been married.

(Signed) W. B. MAGRUDER, M. D.

Sworn and subscribed to before me this 12th day of May, 1868.

(Signed) M. ASHFORD, *Examiner*.

98 Adjourned at the request of Mr. McPherson until 10 o'clock. Thursday, May 14.

Mr. Davidge claims to have his attendance upon the court, sitting in general term, considered by the examiner in fixing the time for meeting, and states that he has every reason to believe that he will be necessary in attendance upon said court at the time appointed, but he says that the examiner decides that it is the right of the counsel for the complainant to determine the time for the next meeting, and that it is not in the power of the examiner to consider the request of the defendant's solicitor, or to do otherwise than proceed to take the testimony at the time and place fixed by the complainant's solicitor.

(Signed) M. ASHFORD, *Examiner.*

MAY 14, 1868.

Met pursuant to adjournment. Present, Mr. McPherson, for the complainant, and the defendant, and one of her solicitors, to wit, Mr.
99 Edwards, and thereupon, and owing to Mr. Davidge being engaged in court, the examination was adjourned until Saturday, the 16th day of May, 1868, at 10 o'clock in the forenoon.

(Signed) M. ASHFORD, *Examiner.*

Deposition of Wilmot Anna Lawrence for complainant.

MAY 16, 1868.

Met pursuant to adjournment. Present, Mr. McPherson, for complainant, and Mr. Davidge for the defendant, and no one else representing the parties.

Mr. Davidge protests against the examination proceeding to-day, assigning as a reason that he has to attend court, having to argue the first case open upon the calendar, Herforth vs. The Corporation of Washington.

And thereupon the complainant produced as a witness one Wil-
100 mot Anna Lawrence, a witness of lawful age, who, being duly sworn, on her oath deposes and says as follows:

In answer to questions by Mr. McPherson:

I reside in this city, and have resided here for the last eleven years. My husband was examiner in the Patent Office. I have known the defendant in this suit some three or four years. I lived a near neighbor to her previous to her seperation from her first husband. She seperated from her husband about eighteen months or two years previous to her marriage to Mr. Bailey, and her first husband died about a year before her last marriage. I lived next door to her in the First ward while she resided there. She moved from the First ward about two years ago. From there she moved to E street north, next door to the corner of 10th west. I knew Albert W. Bailey in his lifetime very well. I knew him about as long as I knew her. He boarded with her when she lived in the First ward, and before she seperated from her first husband. I remember when the defendant and Bailey were married;
101 it was in June last. I was at the depot seeing some friends there off, when I met Bailey and defendant, and defendant showed me her marriage certificate. She had it in a little book. In the spring of 1867, and the winter previous, I had several conversations with the defendant in regard to Mr. Bailey, and her marriage with him. In these conversations she would say that if she could get his life insured she would marry him, and that if she could not get his life insured she could not marry him, as she did not intend to spend her money that she had got on her first husband's life policy in taking care of Bailey,

as he had the consumption and could not live more than a year at the farthest. She said to me, "You ought to hear him cough; he coughs all night."

(NOTE.—At this point Mr. Davidge reappears and states that Mr. Edwards is out of town.)

Q. Was any remark made to the defendant by any one in your presence, and, if so, by whom; what was said; and what was her reply?

102 A. In her assurances that she could get Mr. Bailey's life insured, my husband remarked to her that if there was any company in the United States that would insure his life, it would insure a dead man. Her reply was, as near as I can remember, "That there was a way to do these things, and that if she could succeed she could get his life insured." He then said, "If you would stoop to bribe the doctor, or to practice frauds, you might succeed; for," says he, "Mr. Bailey is too far gone in consumption to be passed in any company." This was all that I remember was said on that occasion. My husband is since deceased. I think that was in April last that Mr. Bailey's life was insured, though I am not positive. It was about a year ago that she came to me and seemed much elated, and said that she had succeeded in getting his life insured.

Q. What took place on that occasion?

103 A. Well, she said that she had concluded to marry him. I don't like to repeat the conversation she used, but suppose I must. She said: "My God, he can't live long; he spits like hell and raises like the devil." That is as near as I can recollect the words, but I know it was in that style. I think my son was present at this conversation, but I wont be positive about that.

Q. Had you any conversation with her after the marriage respecting the insurance? If yea, state when, and what was said.

A. I can't remember the dates nor the times, but I remarked to her that, if Mr. Bailey should die in a very short time, I did not think she ever could get a dollar of the insurance money. She said that she felt perfectly secure in the matter, as she had the papers all right.

104 Q. Did she ever tell you what was the condition of Bailey's health at or about the time of effecting that insurance. If so, what did she say about it?

A. Well, you know that the insurance was effected some time previous to the marriage. Well, I remember calling at her house in the month of May, 1867, on E street, and Mr. Bailey was lying in the bed, apparently asleep. I remarked to the defendant that he (Bailey) looked worse. She said that he had passed through such a severe examination by the doctor for his life insurance that it had caused him to spit blood.

Cross-examined by Mr. Davidge:

Q. Where do you live, madam?

A. I life at 575 Pennsylvania avenue, Capitol Hill. I am boarding at present.

Q. What are the present relations between the defendant and yourself?

105 A. Well, I have no unpleasant feelings towards Mrs. Bailey at all; on the contrary, I have much sympathy for her, but I was brought here to tell the truth, and I suppose I will have to tell it.

Q. Do you speak when you meet?

A. Not at present. I dropped her acquaintance at the advice of my friends.

Q. Are you quite sure that she did not drop you?

A. I am quite sure that she did not. My position I consider firmer than hers. The last time she called at my house I told her at the front door that I desired that our acquaintance should cease.

Q. When was that?

A. About one week after Mr. Bailey's death.

106 Q. Were you renting rooms at that time; and, if so, where?

A. I was renting rooms at Carroll Place, 426 First street east.

Q. Do you know a *Mrs.* Von Alstein?

A. I know her somewhat.

Q. About a week after the death of Mr. Bailey, do you recollect that Mrs. Bailey was about taking a room at your house above named, and that Miss Von Alstein informed you that she would not allow her neice, Mrs. Bailey, to take the room, and that the refusal of Miss Von Alstein was owing to something that passed between you and Mrs. Bailey in relation to a carriage ride with some gentlemen?

A. Well, about that time Mrs. Bailey urged me to let her have
107 an attic room. Miss Von Alstein objected to her going up so high; but my son, DeWitt C. Lawrence, objected to my taking her (Mrs. Bailey) in the house, positively, and said that if I did he would leave, and especially if she had her three children there. (Objected to as not responsive, by Mr. Davidge.) Miss Von Alstein did not inform me that she would not allow her neice, Mrs. Bailey, to take a room in my house, but said that she could take a room if she could get one lower down in the house. She did not refuse to allow her neice to come into my house because of anything that transpired between Mrs. Bailey and myself about a carriage ride. Those parties were strangers to Miss Von Alstein and Mrs. Bailey.

Q. What parties?

A. I don't know that is anybody's business what parties.

108 Q. Do you mean the gentlemen that called in the carriage?

A. I do; but neither Miss Von Alstein, Mrs. Bailey, or myself were invited to take a carriage ride. I merely remarked to Mrs. Bailey that the gentlemen had called in a carriage, and I don't know what she wants to make of it.

Q. Did you not propose to Mrs. Bailey———

A. She did.

Q. Before answering please wait until the question is put. Did you not propose to Mrs. Bailey to go with these gentlemen in the carriage to Alexandria, to eat oysters and ice-cream?

(Objected to.)

A. No, sir; that is a big story.

Q. Have you been on speaking terms with the defendant since about a week after her husband died?

A. No, sir; I was advised by my friends not to have anything to do with Mrs. Bailey. I was very glad to get rid of her acquaintance. I thought a great deal of Mr. Bailey, though, and for his sake kept
109 it up as long as I did. He was a friend of my husband. It will be one year the 27th of June next since my husband died.

Q. When was it that you was advised to cut Mrs. Bailey's acquaintance?

A. Well, on many occasions during the last year of our acquaintance; and when I first knew Mrs. Bailey her mother advised me to have nothing to do with her.

Q. After the death of Mr. Bailey, did you not apply to the defendant

to advance you $2,000 to open a boarding-house, and did she not refuse you?

A. No, sir; I made no such application, and there was no such refusal.

Q. How long after the marriage was it that you had the conversation with the defendant on E street, when Mr. Bailey was lying on the bed, apparently asleep?

A. Well, as I said before, I cannot remember dates. It might have been two or three weeks after the marriage.

110 Q. Was it after you had met Bailey and the defendant at the depot, and the latter had shown you her marriage certificate in the little book?

A. No, sir; it was previous to that.

Q. Were they not married when the conversation took place on E street?

A. No, sir; they were not supposed to be.

Q. In the spring of 1867, were your relations with the defendant intimate?

A. Mr. Bailey being a friend of my husband's, Mr. Bailey and defendant came frequently to my house. I went to her home occasionally.

Q. How came you to the conversation with the defendant about Mr. Bailey, when the latter was lying on the bed?

A. They had not been up to my house for some time—for a week or so—and I supposed that Mr. Bailey was worse, and, being down town, I called in to see how he was. I inquired. On calling for the defendant, the servant directed me to that room, where I found the defendant sitting in the room, and Bailey lying on the bed.

111 Q. Was there any interruption of your relations with the defendant until after Mr. Bailey's death?

A. Well, not particularly.

Q. Was there any interruption? Did you not continue to go to there house, and did she not continue to come to your house as before?

A. Well, I did not go to her house so frequently; I did not visit her so frequently, at the request of my husband and son. There was sometimes an interval of two or three weeks between my visits. Mr. Bailey and the defendant would come frequently. Sometimes there would be the same intervals between their visits.

(The question is repeated to the witness.)

A. She, the defendant, always visited my house more frequently than I did hers. That is all I can say.

Q. Was the conversation with the defendant, when Mr. Bailey was lying on the bed, before or after the time when the defendant came to you and seemed much elated, and said that she had succeeded in getting his life insured.

A. It was after.

Q. How long after?

112 A. I can't recollect it.

Q. About?

A. It might have been a week or two?

Q. How long, as you understood, had the insurance been effected before the conversation mentioned; that is, when Bailey was lying on the bed?

A. Well, it might have been a week or ten days, as near as I can *rember;* perhaps not so long.

Q. Then you say Mrs. Bailey told you that the severity of the exam-

ination by the doctor in behalf of the insurance company was such as to cause him to spit blood?

A. Yes, sir.

Q. Did she say he was then sick from the severity of the examination?

A. She said he was worse after the examination; the doctor had given him such hard blows on the chest.

Q. Did she say he was then suffering from the severity of the examination?

A. She did not say that exactly; she said he was worse.

113 Q. How long after the interview on E street was it you met the defendant, Bailey, at the Department?

A. I suppose it was a month or more.

Q. When was it she said to you, in relation to the insurance of Bailey's life, "that there was a way to do these things, and that if she could succeed she could get his life insured?"

A. It was some time last spring; I don't remember the month or the day; I know that it was in the spring.

Q. Who first told you that you would be wanted to testify in this case?

A. Mr. Seymour, who lives on Second street, Capitol Hill; I think he is a clerk in the Treasury Department.

Q. When was that?

A. A week or two ago; I don't remember exactly.

Q. Do you know Mr. John D. Wise?

A. Well, I have no particular acquaintance with him. I only know him in a business way; he came after me as a witness, and called several times before he found me at home.

114 Q. Did you ever talk with him about this case?

A. Once, before I was summoned.

Q. When was that?

A. Some time in February, as near as I can recollect.

Q. What passed?

A. Well, the conversation passed between us. He said that I would be probably called upon to testify in this case.

Q. Did he state on which side he was working up the case?

A. He did not.

Q. Did he talk over the matter with you?

A. I was preparing to go out, and told him I had but a few moments to spare. The conversation was short. I don't recollect the conversation. I hardly knew which side he was engaged on from his conversation at that time. He asked me if I was acquainted with Mrs. Bailey; then he asked me if I knew anything of her having effected a life insurance on Mr. Bailey's life. I told him I did, but could not give

115 the particulars at that time, but I did give him some points that are cited in the testimony. I repeated some of the remarks that my husband had made when she talked of having his life insured. I don't remember just now what I stated to him.

Q. When did you see him again?

A. Not until yesterday, when he came to inform me that he had come to bring me over here to-day.

Q. Did you see any other parties except Wise and Seymour about this case?

A. Mr. Sprague of the police force, Metropolitan police, I accidently met about a week ago, and he informed me that the trial was progressing, and that I would probably be called upon to testify.

Q. What did you understand by the remark of the defendant, to which you have testified, that there was a way to do these things?

A. I did not give it a *though*. The conversation was more particularly between the defendant and my husband.

Q. How came you to recollect it so as to be able to state it so distinctly?

116 A. Because I was listening and heard it.

Q. Do you undertake to say that the words you have given are the precise words used?

A. They were, to the best of my recollection. I had not thought about the matter until called upon this morning.

Re-direct:

Q. I wish to call your attention to your answer to the question by Mr. Davidge when you say that the conversation you had with the defendant, when Mr. Bailey was lying on the bed, took place after their marriage, and then on the same page you say they were not then married. How do you reconcile these two answers?

A. I misapprehended the first question.

WILMOT A. LAWRENCE.

Subscribed and sworn before me this 16th day of May, 1868.

M. ASHFORD, *Examiner*.

117 *Deposition of Mary Sprague for complainant.*

And thereupon the complainant produced one Mary Sprague, a witness of lawful age, who, being duly sworn, deposes and says:

In answer to questions by Mr. McPherson:

Q. Were you acquainted with Albert W. Bailey in his lifetime? If so, how long?

A. I only got acquainted with Mr. Bailey last September, after he moved on Capitol Hill.

Q. How did that acquaintance arise?

A. It arose through my husband taking me to see him on Capitol Hill. He and my husband were boys together at Oswego, New York.

Q. In what condition did you find Mr. Bailey as to health?

(Objected to as irrelevant.)

A. I found him lying very ill indeed.

Q. In what condition was he in regard to the comforts and appliances belonging to a sick person?

118 (Objected to.)

A. I did not see that there was any comforts at all. The first thing that Mr. Bailey said to me was, if I had ever seen a person lying in his condition to get well. I told him that was a question that I did not like to answer. I asked Mrs. Bailey what nourishment she was giving him. She replied that all he was taking was whiskey. I told her that whiskey would not strengthen him; that he required such nourishment as gruel or chicken broth. I do not think he got the gruel or chicken broth. I doubt very much if she gave it to him. There was a live chicken in the yard, and the defendant told me she had got that chicken to make the broth, but had not done so. The man was covered with bed-sores, and he was lying on a hard mattress. I found him leaning on his elbow, and told him that was an uneasy position. He replied that there was a large bed-sore on the end of his spine, and that

119 was the only position he could lie easy in, as he could not lie on his back at all. When I went to the bedside I laid my hand on the covering, when he flinched and said that the stump of his leg was paining him dreadfully. He inquired of me if I could tell him the cause of his stump paining him so. I asked him if he was coughing as much as when I was last there, and, reaching over to spit, he said that he was. I then told him that I guessed that was the cause. There was no comfort about the bed at all for a sick man. He had nothing under him but a *matrass*, and nothing over him but a quilt and sheet, and complained of being cold.

Q. Have you had experience as a nurse, and, if so, what experience?

(Objected to as irrelevant.)

A. I came out in 1861, and nursed the first Bull Run wounded, and was after that a nurse in a hospital for two years.

120 Q. Did you speak to Mrs. Bailey in relation to what comforts were necessary for her husband; and, if so, what was said and done?

(Objected to.)

A. I spoke to her, and I told Mrs. Bailey that I thought if she would get a feather bed for him that *that* he would lie more comfortably. She said that she had been out to get one for him, but found she could not get a second-hand one for less than $30, and that she could not afford it, as she had not the money. I reminded her that she had told me that she had money in bank. She said, "Why, it cost me $200 to have 'Bert's' life insured; and then I spent $150 when we were married, and I have had him to support ever since; and I think I have spent enough." There was no bed got, and when he died, which was on the 11 of October, he died on that hard *matrass*. I went in the back room and took a brown blanket off the bed there and put it over him.

(Objected to.)

Q. Do you know that the subject of his want of comfort had
121 been brought to the defendant's notice before? and, if so, state what occured on that subject.

(Objected to as irrelevant.)

A. The defendant told me that Mrs. Lake, a friend of her husband, had been to see her, and that as soon as she came in she commenced to tell her (the defendant) what she ought to do for him, and she said that if Mrs. Lake came there again she would kick her out of doors.

(Objected to.)

Q. Did you observe any evidences of care and effection on the part of the defendant towards her husband on that occasion?

(Objected to as irrelevant and suggestive.)

A. No, sir; not much I did not see. I did not see much care taken of him.

Q. What was the conduct of the defendant towards Mr. Bailey, and what were her expressions, if any, in regard to him while in that condition?

(Objected to as irrelevant.)

A. I thought that if she had been very desirous to prolong his life,
122 she would not have kept a chicken eight days in the house, as she did, without making it into soup. I saw the chicken there eight days after, and saw when she sent it away and gave it to Mrs. Lawrence. I heard no expressions from her.

Q. What nourishment was he getting during the time you were visiting him?

(Objected to.)

A. I never saw him get anything else.

Q. Do you know whether he got anything else?

A. No, sir; I do not know, except Mrs. Bailey told me that she had given him weiss-beer.

Q. Would the bed-sores you spoke of have been prevented by the change of bed you recommended?

(Objected to.)

A. I think it could have been prevented if she had got a feather bed, as I told her; and if she could not get the bed, I told her she might get some old comforters and put them under him. Bailey himself said it was the hard *matress* that had made him sore. On the day that he died I took six pillows that were around him on the bed, and beat them up and put them under him, and my husband held him up while I did
123 it, and he went to sleep and slept for fifteen minutes. When he awoke I told him he had been asleep, and he said, "O, my God! why can't I have such a bed as this to sleep on?"

(Answer objected to as not responsive.)

Q. Do you know whether or not Mrs. Bailey had the means of providing the comforts you have spoken of? If so, state your knowledge on that question.

(Objected to as irrelevant.)

A. Yes, sir. She told me that she had two thousand dollars in bank, but she was not going to spend it, as she had spent more than she had ever got back.

Cross-examined by Mr. Davidge:

Q. Are you on speaking terms with the defendant?

A. I am; that is, I was on the day she went to New York.

Q. Are your relations with her friendly?

A. Yes, sir. I have nothing against her.

Q. Is not your husband hostile to her?

124 A. No, sir.

Q. Has he not talked to you against her and her claim in this suit?

A. No, sir; he has not.

Q. Do you know whether he ever applied to her to attend to the collection of the debt due by the complainant?

A. No, sir; she applied to him, telling him she had no friend here she could depend upon.

Q. Was the collection entrusted to him by her?

A. No, sir; she only just spoke to him about it.

Q. How far from your residence was that of the defendant's and her husband, on Capitol Hill?

A. They lived on 5th street, between East Capitol and North A; we lived on 6th street, below D street south.

Q. During Bailey's sickness on Capitol Hill, was he not attended by a physician?

A. Yes, sir; Dr. Krouse attended him.

Q. How often during his sickness on Capitol Hill did you visit him?

125 A. I suppose I was there some three or four times.

Q. Can you swear you were more than twice?

A. I will swear that I was there twice, but I will not swear that I was there oftener, because I cannot recollect.

Q. Were the occasions you were there the same mentioned by you in your examination-in-chief?

A. Yes.

Q. Then, between your first visit in September, and the day he died, you did not visit him, did you?

A. I don't think I did.

Q. How long did you stay on your first visit?

A. I think about two hours.

Q. How long on your second?

A. On the day he died I stayed there from a quarter after 12, noon, until 10 o'clock at night. He died a quarter to five in the afternoon.

The examination was here adjourned until Monday, the 18th day of May, 1868, at 1 o'clock in the afternoon, the time being fixed by
126 complainant's solicitor; Mr. Davidge stating that the argument of the case of Hereforth vs. The Corporation of Washington, in which he is engaged, will take place at 10 o'clock on Monday, in the court in general term, and that the next case assigned specially for that day was Hessler vs. Dixon, in which he is also engaged, and that he saw no probability of being able to attend this examination at the time appointed, and that Messrs. Edwards & Crittenden, his associates in this case, are both absent from the city, and will be on Monday next; that the latter has been absent between three and four weeks, and the former left on Thursday last, and that the defendant has specially requested Mr. Davidge to attend the examination of witnesses in this cause, and he has agreed and is desirous to do so.

This statement is made by Mr. Davidge, in presence of complainant's solicitor.

(Signed) M. ASHFORD, *Examiner.*

127 MONDAY, *May* 18, 1868.

Met pursuant to adjournment, and Mr. Davidge being engaged in court, in the argument of a cause, a recess was had until 3¾ o'clock, (when the court adjourned,) in order to give Mr. Davidge an opportunity to be present, and thereupon Mr. Davidge appears, and on his motion the examination is further adjourned until to-morrow, the 19th of May, at 11 o'clock.

(Signed) M. ASHFORD, *Examiner.*

MAY 19TH, 1868.

Met pursuant to adjournment, when the cross-examination of the aforesaid witness, Mrs. Sprague, was resumed as follows:

Q. You have spoken of the want of proper nourishment in the treatment of Mr. Bailey? Do you not know that his diet was under the regulation of Dr. Crane, his physician?

A. I know from what the defendant said, that the doctor said
128 there was no use to give him anything but a little whiskey to stimulate him.

Q. You say you saw a chicken there in the yard when you visited him, and that eight days afterwards you saw the same chicken alive, and you infer because the chicken was not cooked and given to him that his nourishment was not properly attended to; do you know any facts except what I have mentioned, showing that he was neglected as respects nourishment?

A. I shan't answer that question, because I did not say that. Well, now sir, the day Mr. Bailey died, the defendant had a servant girl in the house. Mr. Bailey asked for a drink, and I went to get some whiskey and water for him, and he put his hand up and said, "For

God's don't give me any more of that, for that has put me where I am." So I called the girl and asked her if she had anything in the house that I could give Mr. Bailey to drink, and she said there was nothing in the house to give him but whiskey, and I judge from that there was not much care taken of him.

(Answer objected to because not responsive and hearsay.

129 Question repeated to the witness.)

A. I know nothing else about the nourishment.

Q. Having had considerable experience as a nurse, you felt annoyed at Mrs. Bailey's not adopting your suggestion as to gruel and chicken broth; did you not?

A. No, sir; I was not annoyed at all about it. They asked me my opinion and I gave it.

Q. How do you know you saw the same chicken eight days after?

(Objected to because the witness has not said that she saw any chicken except on the last visit.)

A. I shan't answer that question.

Q. How do you know that the defendant did not give him chicken broth and gruel both?

A. I know she did not from what she told me herself on the day her husband was dying. She said that she was so bothered about the policy that she could think of nothing else. She said that she expected she was going to be beaten out of the whole insurance money.

(Objected to as not responsive.)

Q. How do you know that it was the same chicken she sent

130 to Mrs. Lawrence?

A. Because when she wrapped it up and gave it to one of her children she told her to take it over and give it to Mrs. Lawrence, that she did not want it.

Q. Who was Mrs. Lawrence?

A. She was then her bosom friend.

Q. You have not yet answered; how do you know it was the same chicken?

A. That is the question I shan't answer.

Q. You say that on the day of his death there were half dozen pillows on the bed. Are not pillows better than a feather bed for a man in his situation, in being more convenient to shake up and adjust?

A. No, sir. He had not sufficient pillows on the bed; there were but two on the bed and one on the lounge, and I asked the servant girl to bring me more, and she brought me two more out of the back room, making six. I don't consider them more convenient than a bed, because they will slip from under you, and a feather bed will not

131 Q. Do you know how long the pillows had been in the house?

A. She told me that she bought them when he coaxed her to get a feather bed. She said she could not afford to get a feather bed, and had got the pillows and paid $3 for them.

Q. Then, although the feather bed was not got, the pillows were; is it not so?

A. Well, I can't tell you.

Q. You say that your husband and Mr. Bailey were boys together; what is your husband's name and occupation?

A. They went together to school; my husband was older than Bailey. My husband's name is Augus. M. Sprague, and is on the Metropolitan police.

Q. Who is Mrs. Lake, mentioned in your examination-in-chief?

A. She is an old lady of Oswego, and is well acquainted with Mr. Bailey and his parents.

Re-direct:

Q. What did Mrs. Bailey tell you about giving her husband chicken broth and gruel?

132 (Objected to because embraced in examination-in-chief. Question withdrawn, and the following question put:)

Q. Being asked how you knew the defendant did not give him chicken broth and gruel, you say you knew she did not from what she herself told you, &c. State what she did tell you, and when.

(Objected to because answered.)

A. I have already stated.

Q. When did you see the chicken in the yard the first time?

(Objected to because already answered.)

A. The day Mr. Bailey died.

Q. Was it alive when you saw it?

A. It was dead, and hanging from the side of the house; the blood was streaming from the neck, the feathers were on it, and it had not been picked.

Q. Did you never see that chicken before?

A. I never did.

MARY SPRAGUE.

Sworn to and subscribed before me this 19th day of May, 1868.

M. ASHFORD, *Examiner.*

133 *Deposition of W'm H. Kuhns for the complainant.*

And thereupon the complainant produced as a witness one W'm H. Kuhns, a witness of lawful age, who, being duly sworn, deposes and says as follows:

I knew Albert W. Bailey in his lifetime. In August, 1864, I was appointed to an office in the Ordnance Department, and was put in the same division with Mr. Bailey, and formed his acquaintance during that fall, and in January, 1865, I went to room with Mr. Bailey, at Mr. Knight's, corner of H and 21st streets, in this city; we only rooned together there one month, when I left, leaving him there. About the month of June, 1865, he was transferred to the Quartermasters General's Office; I have remained in Ordnance Department ever since.

Q. During *you you* acquaintance with Mr. Bailey, how often did you meet him.

A. I met him daily, while he was in the Ordnance Department, until he was transferred. I met him frequently after that; I visited

134 him twice, I know, and perhaps oftener, while he was boarding at defendant's house.

Q. What was his habits in relation to the use of ardent spirits during your acquaintance?

A. Mr. Bailey was addicted to strong drink, and I frequently conversed with him about it, and endeavored to induce him to give it up. The month that I roomed with him, I did it more to induce him to give it up than for any other reason.

Q. To what extent did he drink, to excess or in moderation; and how long did his habit of drinking continue?

(Objected to as leading.)

A. He drank to excess, I should say. His habit of drinking continued as long as I knew him, with the exception of about three months, when

he became a member of the temperance organization; this was, I think, in the spring of 1867. He was in the temperance organization about three months—that is about long enough to give him—and he broke his pledge and was informed on, and at the end of three months he
135 sent in his resignation; he was again admitted into another lodge of the same organization. I cannot fix date of second admission.

Q. What was his conduct when drinking to excess?

A. Well, during the month that I roomed with him I did not like his conduct at all; he was quite quarrelsome when under the influence of liquor, and left him for that reason.

Q. Did the defendant know of his habit of drinking? If yea, state what opportunity she had of knowing his habits.

A. She did know of his drinking. She knew it because he boarded with her, and when I spoke to him and sought to induce him to rejoin the temperance organization she said that she wished he would, and told him that if he would she would go and join it with him. This was before they were married.

Q. What was the condition of Mr. Bailey's health, so far as your observation extended?

A. His health was always poor, never good, and the reason, in 1864, was, I think, on account of his wound. He had lost a leg, and the
136 reason was that he drank and used his leg *to* much; he walked *to* much; he kept it chafed and used it without care.

Q. Did you have any conversation with Mr. Bailey in regard to his health in the spring or summer of 1867? If so, state what he said about it, and on what occasion.

(Objected to.)

A. I had several conversations with during the spring and summer of 1867; once or twice on the streets; I met him and talked with him about his health, once at the defendants' house, and once in particular at the Ordnance Department, when he came there to visit the clerks, on which occasion he told me that he did not expect to live beyond the fall. I can't fix the date of this conversation at the Ordnance Department, but it was before he and defendant were married; he was telling me of being discharged from the Third Auditor's Office; he thought it very hard that he should have been discharged on account of his health, inasmuch as he was a soldier, and had *sost* his leg in the
137 service, and he said they would not have had to keep him long, as he had not long to live, and would not live beyond the fall. In the previous conversations that I have mentioned there was nothing special said. I would ask him "how his health was," and he would respond "that it was no better." In one of these conversations he told me that he was consumptive.

Q. Had he any external manifestations of consumption or other disease?

A. He had a cough, and expectorated, and in his general appearance indicated consumption.

Q. Did you ever know of his spitting blood? If so, state when.

A. I don't remember of ever seeing him spit blood; but I think that in one of those conversations he told me that he had a hemorrhage; I am not positive about this, but think something of the kind was mentioned.

Cross-examined by Mr. Davidge:

Q. Do you belong to any temperance organization; and, if yea, how long have you belonged to one?

138 A. I do not at present. I belonged to a temperance society about eighteen months, but have since been a total abstinence man. I have been a total abstinence man since September, 1865.

Q. When did Mr. Bailey first complain of his health?

A. He complained of his leg ever since I knew him, and that affected his health. He first complained of his cough and expectoration in the winter of 1866 or spring of 1867.

(Signed) W'M A. KUHNS.

Sworn and subscribed before me this 19th day of May, 1868.

(Signed) M. ASHFORD, *Examiner.*

Deposition of Jonas P. Keller.

And thereupon the complainant produced as a witness one Jonas P. Keller, a witness of lawful age, who, being duly sworn, deposes and says as follows:

139 I have been acting as chief clerk of the Ordnance Department for the last seven or eight years. I knew Albert W. Bailey there as a clerk in that office. He was a clerk in that office until about the 30th of May, 1865.

Q. Did your acquaintance with him continue after that time?

A. No; I had no intercourse with him, but saw him once or twice after that.

Q. Had you a conversation with him in May or June, 1867, in which he spoke of the condition of his health? If yea, state what he said on that subject.

(Ojected to.)

A. Mr. Bailey *vaied* to see me; it may be about a year ago; about the date I am not positive; I was not aware that he had been discharged from employment, and asked him how he got along. He then told me that Mr. Wilson, the Third Auditor, had discharged him because he was too sick to perform his duties; that he was very low with consumption, and did not expect to live many weeks. I ended the conversation by trying to cheer him up, and we parted.

140 Q. Did you know that he was then married?

A. I had no personal knowledge on the subject, but it was after I had heard that he was married that this conversation took place.

Q. How long was it after he had left the Auditor's Office that this conversation took place?

A. I have no personal knowledge on the subject, but I understood him to say that he had been out of employment about six weeks.

J. P. KELLER.

Sworn to and subscribed before me this 19th day of May, 1868.

M. ASHFORD, *Examiner.*

Deposition of Charles King.

And thereupon the complainant produced as a witness one Charles King, a witness of lawful age, who, being duly sworn, deposes and says as follows:

In the spring of 1867 I was agent for The Globe Mutual Life
141 Insurance of New York. I was the Washington agent.

Q. Please state whether Albert W. Bailey, or the defendant, called at your office in the spring of 1867, to make application or to

make inquiry concerning insurance upon his life? If yea, state what passed.

A. Mr. Bailey did not call; Mrs. Bailey did, but I don't know that she called expressly for that purpose. At that time she was a client of mine. [I was at that time her lawyer, and had been her lawyer for some time, and have still business of her's in charge. About the time she called she was in the habit of coming to see me frequently about business of hers I had in hand.]

(NOTE.—Mr. McPherson desires the examiner to note that so much of the answer of the witness as is embraced in brackets was elicited by questions put by Mr. Davidge. And thereupon Mr. Davidge objects to the introduction of any evidence touching declarations made by the defendant in the course of professional interviews between attor-
142 ney and client. The assertions of counsel that the declarations intended to be offered in evidence were such as were made to the witness in the capacity of insurance agent, and not of attorney, affords no pretext for the introduction of the evidence. It is enough that the declarations were made in the course of professional employment, and under the confidence reposed by the defendant in her attorney.)

Q. Will you answer the questions, as far as you can, without betraying professional confidence?

A. She inquired the rates that our company charged for insurance, and what it would cost to insure Mr. Bailey. I told her it was useless to make inquiries about it, as it was a standing rule with the Globe never to insure a person who had lost a limb. The subject was then dismissed.

Q. When was that?

A. I cannot remember the month, but it was not far from a year ago. I don't remember whether she was married at that time or no*r*.

CHARLES KING.

143 Sworn to and subscribed before me this 19th day of May, 1868.

M. ASHFORD, *Examiner.*

Adjourned until to-morrow, 20th of May, at 10 o'clock.

M. ASHFORD, *Examiner.*

Deposition of James T. Young for complainant.

Met pursuant to adjournment. Present, Messrs. Davidge & McPherson. And thereupon complainant produced as a witness one James T. Young, a witness of lawful age, who being duly sworn, deposes and says, as follows:

I am a practicing physician in this city. I knew Albert W. Bailey; first met him on the 8th or 9th of February, 1867; that afternoon I was in the neighborhood of Callan's drug-store, on 10th street, between D and E streets, in a tailor shop, and as I came out Mr. Bailey passed. I went into Callan's, and Callan told me that Bailey wanted to
144 consult me, and had made inquiries for my office. I think Callan sent a boy for him, and Bailey returned to the store. He wished me to prescribe for him at that time, and said he wished to have his life insured, and if I could he would like to have me to recommend him to the agent of the company for which I was one of the examiners—The Equitable Assurance Company of New York. I told him I would be glad to do so if I found him sound, and told him, before doing so, I would like to examine him carefully at my office. I proceeded to examine

him then, with a view of prescribing for him, merely plac my ear to his chest. He complained of being restless and nervous, especially at night, and unable to sleep. He was troubled considerably with a cough, disturbance of the stomach, and I think loss of appetite. I think he had also some huskiness of the voice—more of a husky whisper. I prescribed for him, giving him tincture of lobelia, tincture of hyoscyamus, and tincture of camphor, two drachms each; I told him to take a teaspoonfull at bed-time, and to be repeated in an hour and one-half,
145 if necessary; that was to quiet him. I then made an appointment with him for Sunday afternoon, the 10th, for examination at my office. He came at the time appointed, and upon examination of the chest I found a loud, blowing murmur in the neighborhood of the apex of the left lung. I can't give a full statement of my examination at that time. I don't recollect. I did not either form or give an opinion at that time. I suspected he had an aneurism, and told him I should like to watch the case, and he promised to come again to my office. I prescribed, at that time, bromide of potassium, 15 grains, in water, to be taken for his nervousness, instead of the prescription I had before given him, and that to be taken at night, and to be repeated in an hour. I should have stated that in trying percussion I discovered some dulness near the summit of the left lung. In two weeks he came again—this is on 24th February; I had not seen him professionally in the mean time.

He came by appointment made since the first interview made
146 at the office. I took notes of the case at that time. He complained of a tingled, deadened, unnatural sensation in the left fore-arm, and said he had to make more exertion in using it. He had pain in the region of the left shoulder-blade which he felt only when the arm was moved; sometimes had pain just above the left collar-bone. He said that he had only felt that pain one day (and that in wet weather) since his last visit. He said that he had had sudden sharp pain about the apex of the heart at times. He also said that his amputated limb had occasionally pained him. He said he had often suffered from nervousness that had disturbed his rest at night, and had a ringing in his ears for five or six weeks, and that he had had at times years before. He also said that his sight at times had been deficient, but he had noticed no difference in the two eyes. He said that he had sometimes been annoyed by a twitching of the upper eyelid, and that both pupils were equally sensible to the light. He said that he had noticed no shortness of breath except after great exertion. He stated that
147 he had had a cough for three or four weeks before consulting me. He said he had for a long period suffered from irritation of the wind-pipe, which was relieved when he was able to expectorate. He said he had had the measles in his lifetime, convulsion in early childhood, but none since. He stated that he had had rheumatism in his amputated limb while in the Army. He stated also, in reply to further questions by me, that his mother died of cancer of the womb, and that his father died of consumption at the age of 35. He stated his own age to be 24, and his weight 122 pounds, and his height 5 feet 9 inches. His pulse beat 96. I *though* he was excited at the examination. His pulse was somewhat irregular at both sides, and did not seem to beat in unison with each other. His pulse was full and moderately compressible. Under percussion *resonace* was diminished in the space above and below the left collar-bone. The same difference was perceptible in the region above the left shoulder-blade. *What* auscultation or the *tethescope*, a loud smooth murmur with the *firt* sound of the heart was heard in the
148 space above and below the collar-bone. The murmur diminished

as the *tethescope* was removed, either to the right or downwards. The murmur disappeared during a full inspiration. The chest seemed to expand uniformly—*thit* is by inspection—I mean both sides of the chest.

His voice, at that time, was affected with the same huskiness I have spoken of. He said that the examination caused him to have the same pain under the shoulder-blade. After the examination I have above detailed I told him that I had not formed an opinion as to his case; that I thought he had trouble in the arteries beyond the heart, leading from the heart. I told him in such a manner as not to alarm him. He wanted to know if his heart was affected, and I told him that I could discover no disease in the heart itself, but that I had fears about the arteries leading from the heart.

I cautioned him against the use of ardent spirits and stimulants.

I next saw him professionally on the 1st of March. He then
149 complained of rheumatic pains, the particular locality of which I don't remember. I don't remember giving any *per*scription when I made the detailed examination. On the 1st March I prescribed wine of colchicum seed 2 fluid-drachms, iodide of potassium 1½ drachms, water 2 fluid-ounces. Of this he was to take a teaspoon 3 times daily. I also prescribed a tonic composed of the citrate of iron and strycura 70 grains, elixir of calasaya 2 fluid-ounces, water one ounce, of which he was to take a teaspoonful 3 times a day after eating. On the 8th of March he again consulted me. At that time he complained mostly of derangement of the stomach and loss of appetite. I think he stated at that time that he could not retain his food on his stomach, but I am not certain. I prescribed carbonate of bismuth 80 grains, powdered cinchona 80 grains, powdered capsicum 8 grains, mixed and divided into 8 powders, and directed him to take one of these a half hour before eating.

He next consulted me on April 1, when I gave him a cough mixture.

I would here say that I had previously refrained from giving
150 him a cough mixture, because I was afraid it would interfere with his appetite. The cough mixture was composed of cyanuret of potassium 1½ grains, sulphate of morphia 1¼ grains, syrup of tolu 1 fluid-ounce, syrup of wild cherry bark 1 fluid half-ounce, water one-half fluid-ounce; of this he was directed to take from 40 drops to a teaspoonful, when his cough was severe, every two or three hours. I told him not to take it when his cough was not troublesome, as it would more or less affect his appetite. I also ordered Blair's syrup of *p*ypophosphites of lime, soda, &c. At this time I gave it as my opinion that he had pulmonary tuberc*o*losis, or consumption. I told him that in such a manner as not to alarm him any more than possible. I told him that his lung was diseased, and that he would have to be very *a*particular and follow strictly the directions of his physician. He came again to my office April 13, (all consultations, except the first at Callan's, were at my office,) and I then ordered a continuance of the hypophos-
151 phites, and also cod-liver oil, and directed an ointment of tartar emetic 30 grains, ½ oz. simple cerate, to be rubbed on the upper part of his chest every night until an eruption was produced. He did not consult me after this at my office until the 14th of May. I was called to see him at the defendant's house, Sunday, May 12th. He was then confined to his bed; he had some fever, I think night sweats, and abundance of moist *valves*, more particulary in the left lung. I think he also had some in the right lung. There were signs of considerable solidification of the left lung. I made no notes of this visit, but

speak altogether from recollection; I cannot speak positive as to his trouble at that time, but think I was of the opinion he was suffering from some circumstanced pneumonia, and so stated; or that there was softening of the diseased portion of the lung. I am sure that I thought the disease had considerably progressed, but I don't know that I so stated. He had been coughing and expectorating considerably; I did not see him spit any blood. In the course of my treatment of him, I have a vague impression that he stated that he
152 had spat blood, because I think he said that he was weakened by it, and I endeavered to relieve him of any alarm on the subject. In this last visit he complained that the pain under the shoulder-blade had annoyed him very much, and I ordered a small blister in that locality, which he stated had perfectly relieved him. Either on this day or the next I told him that I thought he had been using stimulants too freely, and prescribed as a substitute a bitter tonic and a continuance of the cod-liver oil. I made him two visits at the house, viz, on Sunday and Monday; and on the third day he came to my office—that is, on May 14th. I don't remember that I gave any prescription on that day. He came once again on May 22, but I took no notes of that consultation. I never saw him afterwards professionally.

In giving a detailed statement of the examination at my office on the 24th February, I speark from notes taken at the time. At the first interview at my office I told Bailey that I could not recommend
153 him for insurance in The Equitable Assurance Company; that I did not consider him a sound man. After one of my visits to the house, Mrs. Bailey came into the hall, and asked me what I thought of the case. I told her he had consumption, and (I think in answer to an inquiry of hers as to how long he would live) I stated that I could not say; that he might live two years, or might not live more than six months; that I had known some persons with consumption to live a long life. She seemed to be much distressed, and stated they were engaged to be married. I cautioned her against stating what I had said to Mr. Bailey, as I thought it might have an injurious effect. Afterwards (I can't say whether before or after my last professional interview on the 22d of May) I met him at night on 10th street, at the E street crossing. He then alluded to the conversation that I had with Mrs. Bailey, and stated that, as soon as I had left the house, she had entered his room and stated that I had said that he would not live over two months,
154 and that he had made light of it at the time. I told him that he was mistaken, and told him what I did tell her. He in this conversation with me ridiculed the idea of dying so soon. I commenced practice in this city in 1864.

(Signed) JAMES T. YOUNG, M. D.

Sworn to and subscribed before me this 20th day of May, 1868.

(Signed) M. ASHFORD, *Examiner.*

Deposition of Augustus M. Sprague for complainant.

And thereupon complainant produced as a witness one Augustus M. Sprague, a witness of lawful age, who, being duly sworn, deposes and says:

I knew the late Albert W. Bailey from his childhood to the date of his death. I don't think I saw him from 1859 to 1863 or 1864, when I met him here.

Q. What were your relations with here, and how often did you meet him?

155 A. My relations with him were intimate and friendly, and up to a few months before his death I met him once a month, or once in two months, or once in three months. After I learned of his sickness I saw him more frequently. Some eight or nine months before he was taken to his bed I met him on the street, and he said he was very bad, and was afraid he was going to have the consumption, or had the consumption, or something to that effect. I said, "I guess not, Bert," or something to that effect.

Q. How much did you see of him after the 10th of June, 1867?

A. I did not see him much after that, only when I went to the house to see him—I mean the defendant's house. I saw him probably three or four or five times before he moved on Capitol Hill. I went to the house on E street to see him three or four times. After he moved to Capitol Hill I think the first time I saw him was about two weeks before he died. I won't be positive about that. After that I saw him probably every other day, and as he grew worse saw him every day.

Q. State what condition he was in during these last ten days;

156 how his wants were provided for, both as regards the comforts of the bed and nourishment: whether or not you spoke with the defendant on that subject; what passed between you, and the result.

A. He was confined to his bed from the time I first saw him until the time of his death. He seemed to be suffering a good deal from bed sores, and his stump pained him a good deal. He lay on a *matress*; I can't say whether it was a straw *matress* or a husk *matress*. I believe between the sheet and the *matress* there was a quilt or a blanket; there was the ordinary bed-clothing on the bed. He complained of the *matress* being hard, and he had two pillows under his head, and sometimes he would put one of the pillows under his elbow, on which he had a bed-sore, and rest on that. He complained that he did not get proper nourishment. When I was there I would see fruit on the table by his bed, and sometimes tomatoes cut up and bread. That is what I saw myself. I asked the defendant if she had got a feather-bed for him, and she said,

"No; that it was not necessary to go to that trouble, as he could

157 not live long." I offered to get an air-bed or water-bed from Dr. Bliss, which I could have got without much trouble, as that would be cooling to his sores. She said that it was not worth while; that he would not live long enough to go to the trouble. The bed was not got. The only thing that was got, I went around the corner and got a prop to ease him up in the bed. The day before, or the same day he died, he said that he could only lay easy a few minutes. There were two pillows on the bed, one on the lounge, and two or three in the back room. These pillows were all collected together, and another person and myself lifted Bailey up, while my wife put the pillows under him. When my wife told the servant to bring out the pillows from the back room she said they were *to* filthy, and I saw that they were so when she brought them out. They had no cases on them, and all the pillows together would not make a good pillow. He then went to sleep, and slept about 15 minutes; and when he awoke, he said it was the first time he had slept since on that bed, or words to that effect.

158 Q. Do you know whether or not the defendant had the means to provide for the necessary comforts of her husband? If yea, state your knowledge on the subject.

A. From her own statement I know that she had. She told me that she had $2,000 in bank, and shortly after Mr. Bailey's death she went

out and spent about $150 in a gold watch and furs and other articles of wearing apparel. I did not see her spend the money, but I saw the goods, and she told me she had spent about that much. The morning after the death of Mr. Bailey she sent to the bank, and drew money to defray the expenses of the funeral.

Cross-examined by Mr. Davidge:

Q. What is your occupation, and how long have you been so employed?

A. I am a police officer; have been such about four years and six months.

Q. Are your relations with the defendant friendly or otherwise?

159 A. Yes; they are friendly.

Q. Have your feelings towards her been friendly since Mr. Bailey's death?

A. Well, yes; I have no ill-feeling, and harbor no ill-feeling towards her at all.

Q. Did you offer to assist her in obtaining the insurance money from the complainant?

A. I did.

Q. Did she employ you?

A. No, sir.

Q. Did you subsequently abuse her and her claim against the complainant?

A. No.

Q. Did you ever say you believed she had murdered her husband?

A. No.

Q. Did you ever say you believed she was a fiend in human form?

A. I have said something of that kind in my house.

Q. Did you ever write any letters in prejudice of her or her claim against the complainant?

A. No.

160 Q. Look at these letters now shown you, and see if they are in your handwriting.

A. They are in my handwriting, and signed by me. Nett, to whom two of them are addressed, is Miss Von Alstein, the aunt of Mr. Bailey.

(The letters are hereunto annexed, marked M. A., 1, 2, 3.)

Q. Do you think your feelings towards the defendant friendly when you wrote the last two letters?

A. They were not; they could not have been.

Q. You say in the letter of February 18, 1868, that the company had employed detectives before Bailey's death. How do you know that?

A. Mr. Wise told me so, and so did Mrs. Bailey herself.

Q. Did Wise tell you so before Bailey's death?

A. After his death he told me so, and said he had been employed before Bailey's death to work up the case.

(Objected to as hearsay.)

Q. Is Wise a detective?

A. He passes as such?

Q. Besides Wise, who else was employed?

161 (Objected to.)

A. Wise told me that others were employed; and in the letter I say if what I have heard be true detectives had been employed.

Q. Did Wise tell you what he was to get for working up the case?

A. No, sir; he said nothing about that.

Adjourned until 10 o'clock on Friday, the 22d of May.

(Signed) M. ASHFORD, *Examiner.*

MAY 22, 1868.

Met pursuant to adjournment, and on cross-examination the witness, Mr. Sprague, resumed as follows:

Q. When did Mrs. Bailey tell you that she had $2,000 in bank?

A. She told me several times. I cannot give the day and date. It might have been a week or ten days after Mr. Bailey died.

Q. Are you the party whose affidavit was filed with complain-
162 ant when the defendant was seeking to obtain her insurance money?

(Objected to by Mr. Appleby.)

A. I don't know whether my affidavit was filed. I made an affidavit as to his general character before he came to Washington. I think that was the affidavit, but I cannot recall its contents to memory.

Q. To whom did you give the affidavit?

(Objected to.)

A. I think to Mr. Cha's King, her lawyer.

Q. Before whom did you swear to that affidavit?

A. I think Justice Cull.

Q. Are the statements in that paper correct?

(Objected to.)

A. I did not read the whole of the affidavit.

Q. Did you swear to it without reading it, or hearing it read?

A. I did not hear it all read. There were several papers attached to it.

Q. You were not asked what the papers were attached to it. I want to know whether you made that affidavit without reading or having read the statements, to the truth of which you made oath.

163 A. I have answered as well as my memory serves me.

Q. When did you first see Mr. Wise, or any agent of the company, in relation to this case?

(Objected to.)

A. I can't remember the date. It was some time after Bailey's death I saw Mr. Wise. I also saw Mr. Fessenden, the president of the company.

Q. Anybody else?

A. Yes; another gentleman, whose name I have forgotten. I have also seen Mr. Taylor several times.

Q. Were you employed by any of these parties to assist in working up this case?

A. I was not.

Q. What did they see you about?

(Objected to.)

A. They asked me if I knew Mr. Bailey, and when he died.

Q. Is that all?

(Objected to.)

A. That was not all they asked me. I cannot recollect what else they asked me.

164 Q. Did not some of them talk to you about the affidavit you had made?

(Objected to.)

A. I don't recollect.

Q. How often did you see Fessenden?

A. I saw him twice.

Q. Was there any promise of reward held out to you by him or any other party?

A. No, sir.

Q. Have you received any money?

A. No, sir.

Q. How often did you see Mr. Taylor on this subject?

(Objected to.)

A. He came to see me once, and I have often met him.

Q. What connection has Taylor with the company?

(Objected to.)

A. I will not be positive, but I think he told me he was a clerk in Mr. Brewester's office.

(Answer objected to.)

Q. Do you know a little child by the name of Ella Von Komecher?

(Objected to.)

A. Yes; I know a girl, about thirteen years, I think, by that name.

165 Q. Do you recollect having *a* interview, about six weeks after Mr. Bailey's death, with the defendant, at her house on Capitol Hill, in the presence of that girl, in relation to the collection of the insurance money from the complainant?

A. I don't recollect having an interview at any stated time. The girl was there often when I saw Mrs. Bailey.

Q. I allude to one occasion, when you and your wife were together at Mrs. Bailey's.

A. I don't remember any certain time. We were there often after Mr. Bailey's death.

Q. Do you recollect on one occasion, about six weeks after Mr Bailey's death, at the house of the defendant on Capitol Hill, and in the presence of the girl, the collection of the insurance money was talked about, and that you offered to collect it for $100, and that the defendant refused to give you that amount, and that either you or Mrs. Sprague said that if the defendant would not give you $100, the company or John Wise would give you $500 for your services against the claim?

(Objected to.)

166 A. Such a conversation never occurred. I never mentioned John Wise's name only when Mrs. Bailey asked me who he was; and when she told me she had received back the money she had paid for the policy, she described a man. I said it was Wise, from the description. Sometimes I would say to her that John Wise was a shrewd man, but nothing of any importance.

(The witness here stated that he wanted it recorded, in vindication to himself, that the letter under date October 22, 1867, and marked M. A., No. 2, was written at the instance partial dictation of Mrs. Bailey, the defendant.)

(Signed) A. M. SPRAGUE.

Sworn to and subscribed before me this 22d day of May, 1868.

(Signed) M. ASHFORD, *Examiner.*

At the instance of Mr. Appleby, solicitor for complainant, the two papers marked Lindsey, No. 1, and Lindsey, No. 2, were, with the consent of both parties to the cause, filed herewith.

167 *Exhibit marked "M. A., No. 1."*

Letter from A. M. Sprague to Miss Vanalstine.

FORTIETH CONGRESS U. S.,
Washington, D. C., Feb. 5, 1868.

MISS VANALSTINE: This is my third letter to you, and no answer; and I think it my duty to let you, as I promised, know something of what is agoing on in Washington. Elizabeth Bailey (alouth no worthey of the name) is heer. I never was so mistaken in a person in my life as I have bee in that woomon, a fien in femaiel forme. She has abused mee and my wife, and every one that she can influence she will. She has talked about you, and tell some hard things of you and Senitor Nye. She has given you a name that the vilest womene is not worthey of. It is belived that she helped poor Burt out of this world. The
168 inshureance company have refused to pay the *the* inshurance money on that account. She has said that she would not marry him until he got his life inshured. He might go home and die, for he was a spitting his dam rotton insides out, and all she wanted was the money, and too maney things to think of now. The company has had detecttives at work to find out all they could, and they have got a good maney witnesses against her. I wish you or Ben could come to Washington. I think it would be to your interest; I know it would. She says that Ben stole money from Burt, and that you cheated him out of ($300) three hundred dollars. She has taken her case out of King's, hands, and Senator Nye is agoing to take it up for her, and I heard at your suggestion. I think if the senitor knew what I know, he would be carefull of what hee does. If I was acuainted with him, I would inform him of some things. If he was a friend of Burt's, or is a friend of Ben's, or yours, he ought to know something of his long toung's talk. If you will write to him and tell him send for me, I give him some clear light in the case, and
169 think he will be saisfied with all I say, for I have the witnesses here in Washington to prove all I will say to him. I believe from what I learn, she murdered that man by degrees to geet his inshurance money. I can prove to the senitor to his satisfaction all I have sayed to you. If I could see youI could tell you something to make you open your eyes. She is a bad woman; she would doe eneything for money. I never was so deceived in my life. If God will forgive mee for takeing my wife to that feign, I shall bee satisfyed. Pleas answer this soon, from your friend and well-wisher,

A. M. SPRAGUE,
No. 507 *6th St. East, Washington, D. C.*

Exhibit marked "M. A., No. 2."

WASHINGTON, D. C., *Oct.* 22, 1867.

FRIEND NETTE: I would of waited to heere from you, but I want to post you in some matters about Burte's inshureance. The company has employed dettectives to work some plan to keep Lisey out
170 of the money. The companey wants his likeness, and probley will send a detective to Oswego, to learn all they can about him and his habitts. So bee on your guard, and do not leet his likeness go out of your hands, and bee careful whoe you to about him, for they will geet some of your most intermate friend to to question you.

Lisey is at my house this evening. She is well; she is not contented at Mrs. Johnson's; she is a going to leave their as soon as she can find a place to go. Shee wants to come and board with mee. If I can get a larger house, I may take her. She sends her love to you. My wife joines with me in sending my love. No more time; so, good night.

From your friend,

AUGUSTUS M. SPRAGUE, M. P.,
No. 507 6th St. East, Capitol Hill.

P. S.—Pleas answer soon.

177 *Exhibit marked "M. A., No. 3."*

WASHINGTON, D. C., *Feb'y* 18, 1868.

FRIEND NETT: I received yours of the 16th this morning. It found well, and my wife has not been well this winter; she has been confined to her room the most of the winter, but is so she gets out nowe. The company has commenced suit against Lizzey; the court has appointed a comishenor to take evidence in the case. If all I can learn is true of her treatment to Burt, she ought not geet a red cent, and should bee punished according to law. The company has some 20 or 30 witnesses against her. Senitor Nye is out of town now, but I understand will be back in time to attend the tryal. She has employed councell aside from the senitor. The company intend to prove that she keep him in a nonconcious
dureing his whole sickness, by feeding him whiskey; and before
172 he was taken to his bed she encouradge his intoxication; that his joining a temperance society was a blind; and that she told diferant persons that if she could make Bailey geet his life inshured she would marry him; if not he might go home and die with his friends, for he would not live but a few months, and then she would get the money, and the company has had detectives at work before Burt died, and she was suspected by them. I have no more to write this time. I will write agane as I learn more of the case. I send you a notice of the case I cut out from a paipor. My wife joines with me in sending my regards to you. Pleas excuse bad speling and bad writing.

From yours, and c. c.,

A. M. SPRAGUE,
No. 507 6 St. East.

173 *Exhibit marked "Lindsey, No. 1."*

WASHINGTON, D. C., *April 1st*, '67

I certify that Mr. A. W. Bailey has been under my treatment since the early part of February, and that during the month of March he has been obliged to remain at home for several days on account of illness.

(Signed) JAMES T. YOUNG, M. D.,
428 *New York Ave.*

A true copy of the original on file in Third Auditor's Office.

A. M. GANGEWER,
Chief Clerk.

THIRD AUDITOR'S OFFICE, *May* 21, 1868.

174 *Exhibit marked "Lindsay, No. 2."*

THIRD AUDITOR'S OFFICE, *May 21st*, 1868.

Absence of A. W. Bailey:
Appointed April 24th, 1866.

3	days absent,	May,	1866.	
1	" "	June,	"	
2	" "	July,	"	
3	" leave,	"	"	
6	" sick,	August,	"	
2	" "	Sept'r,	"	
1	" excused,	"	"	
9	" sick,	Oct.,	"	
2	" leave,	Nov.,	"	
1	" sick,	"	"	
5	" "	Dec.,	"	
6	" "	Jan'y,	1867	
3	" "	Feb'y,	"	
10	" "	March,	"	
2	" leave,	"	"	
9	" sick,	April,	"	phy's certf. filed.
14	" "	May,	"	
79	Total.			

LINDSAY,
Clerk, C. C. Room.

I certify that this is a true abstract of the absence of Mr. Bailey, as charged upon the books of this office.
May 21st, 1868.

T. W. LINDSAY,
Ch'f Clk's Room.

175 *Deposition of Dr. James C. Hall for complainant.*

In the supreme court of the District of Columbia.

PHŒNIX MUTUAL LIFE INSURANCE CO.
versus
ELIZABETH A. BAILEY. } Equity, No. 1188.

At an examination of witnesses in the above-named cause, begun and held at the office of Examiner Ashford, Saturday, October 3, 1868, the following depositions were taken:

Dr. James C. Hall, a witness of lawful age, produced, sworn, and examined on behalf of the complainant, deposes and says:

In answer to questions by Mr. McPherson:

I have read the testimony given in this case by Doctors Magruder, Young, Eliot, and Crouse. When this case was first mentioned to me yesterday, I remembered the fact that Dr. Young had shown me
176 notes of his examination in this case, made last year. From reading the testimony of Doctor Magruder, who it seems Albert W. Bailey consulted before Dr. Young, I should think he was suffering from *symtoms* of impending consumption. He was in that condition in which a patient is before consumption is fully established or recognized. Dr. Young seems to me to be the only one who made a

careful examination of this case by physical signs. In my opinion, the signs obtained by an inspection of the chest by percussion, by auscultation, established beyond a doubt that he had tubercolosis, which is pulmonary consumption. I will say also that I believe Dr. Young fully competent to make a physicial examination, and to form a judgement. I read Dr. Eliot's testimony; he does not seem to have examined the case with that decree of care, competent as he is, to have enabled him to form an opinion. At that stage of the disease, as I suppose existed at the time of Dr. Eliot's examination, it would require great care and considerable time to make a proper diagnosis; it is necessary to examine a patient several times before you can come to a conclusion.

177 I am sorry to say that I differ from Dr. Crouse, both as to his opinions and his facts. He does not state in his testimony that at any time he made a physical examination, nor the result of it. By a physical examination we mean all that we can ascertain by inspection, by measurement, by movement of the chest, by percussion, by auscultation. Dr. Crouse's opinion seems to have been this, that he had acute bronchitis, which invaded the lungs. His view of its being bronchitis is neither sustained by the history of the case, the symptoms he described, or the fatal results. By this I mean that his view of the case is not sustained by the history of the case from the beginning, the symptoms he described, or the fact that the man died. My explination is, that no light is thrown on the case by the fact of his death. Bronchitis is the most common of all diseases, and one that is rarely fatal, except in very young, the very old, or the very feeble. The ordinary seat of bronchitis is in the large bronchial tubes; when it extends to the smaller, but not the smallest bronchial tubes, it is

178 then called capillary bronchitis. The duration of acute bronchitis is from ten to twelve days; if it lasts much beyond that period, it becomes chronic bronchitis, which may last for years. Dr. Crouse says that bronchitis frequently invades the lungs; I say that it very rarely does so, and that in almost every case of true consumption, what we call circumscribed bronchitis is developed as a consequence of tuberculosis. I say this: Dr. Crouse does not seem to comprehend the distinction between galloping consumption and acute consumption. Galloping consumption is the usually rapid progness of an ordinary case of consumption, which may occupy only a small portion of the lung, which destroys life by the profuseness of discharge and the exhaustion of strength. Acute consumption is where the whole lung or lungs are thickly sown with miliary tubercules which destroy life by *imparing* the functions respiration. I don't think the condition of things, as described by Dr. Crouse, was the result of bronchitis. Secondary bronchitis is well recognized where it is the result of measles, scarlatina, and other eruptive diseases, (and it may result from small-pox;) it is then called secondary bronchitis. I say that circum-

179 scribed acute bronchitis is almost the invariable accompaniment of tuberculosis; laryngitis more rarely, but sometimes. Bronchitis does not invade the lungs, as I have said before, but very rarely, and tuberculosis is almost *invaribly* accompanied by or develop*t* acute circumscribed bronchitis. I cannot conceive of phthisis pulm*a*nalis that is not tubercolous. I suppose that bronchitis might, with a person predisposed to consumption, develop tubercles, as any other disease does which impairs the general tone or health of the system. If bronchitis invades the substance of the lungs, it is no longer bronchitis. A consolidation of the lung is not the result or symptom of bronchitis; it arises from the presence of crude tubercles in the tissue of the lung. When

they liquify and the matter is discharged, a cavity remains and the consolidation ceases. The apex of the lungs is the usual seat of consolidation in tuberculosis.

(The facts mentioned by Dr. Young, on page 98 of his testimony, having been read to the witness—)

Witness says: They were strong evidence of the existance of
180 tubercles in the apex of the lung. Their presence would explain the features of percussion, the increased resonance of the voice, and murmur of the heart, which was conveyed by the solidification or condensation of the tissue of the lung, which makes it a better conductor of sound. I should suppose that Dr. Crouse, from the facts stated by him, saw the case in the second stage of consumption. I have seen consumption run its course in six weeks; the usual course is from nine to eighteen months.

The cross-examination postponed till Monday, October 5, 1868.

Deposition of Edson Fessenden for complainant.

And thereupon the defendant produces as a witness Edson Fessenden, who, being duly sworn, deposes and says (subject to an objection to be made by the defendant at the hearing) as follows:

I am the president of The Phœnix Mutual Life Insurance Com-
181 pany, and have been for 15 or 16 years. I give my entire time and personal attention to the business of the company. All applications that are received are referred to Doctor Barrows. Those that he approves are passed, and policies issued. Cases that he has any doubt about he submits to the president and secretary, and we determine them in consultation with him; I have, therefore, necessarily made the subject of life insurance a special study, and have consulted with the officers of other companys, both in Hartford and elsewhere, in respect to life risks and the assurability of the parties. In the practice of our company, and of all companies with which I am acquainted, (except one or two companies which make a business of taking *impared* risks for increased premiums,) only those persons are insured who have good health, and a good record of person and family, and the rates of premium are formed upon that basis. The questions proposed to the applicant, and which are in evidence in this case, are intended to ascertain whether he be such a person. We never grant a policy to an applicant where it appears that he is actually at the time suffer-
182 ing from disease. If it be slight, we should defer it until we have satisfactory evidence that he has recouvered. I think this the general practice of all companies, with the exception of those I have mentioned. In the present case, if it had been represented to us that the applicant had any disease of the lungs or the bronchial tubes, or had been treated for consumption, or pronounced as consumptive by his attending physician within six months, we would have deferred the application, or have rejected it. Consumption, among insurance companies, is regarded as the most dangerous of the hereditary diseases, and more likely than any other to affect the assurability, and therefore requires a special examination of his record of person and family. In the present case, the applicant being 24 years of age, if we had been informed that his father died of consumption, the application would have been rejected. I think that would have been in accordance with the usual practice of companies. I do not think that there is a com-
183 pany in the United States that would have taken him if it had been known that his father died of consumption under 45, and that he

himself had been under treatment for consumption, bronchitis, or any lung disease. His habits, as related by the witness Callan, whose testimony I have read, would have caused his rejection, as would intemperance under any circumstances. The object of the reference required from an intimate friend is, that the answers of the applicant may be corroborated by some disinterested person. In no case would we take the certificate of the partie's wife, or any one who has a direct interest in the insurance. If, in the present case, we had known that the party who signed the certificate as an intimate friend, was about to marry the applicant, and the insurance was made for her benefit, we would not have granted the policy without investigation, and the fact would have raised a suspicion in our minds, which would have caused us to look closely in the matter. Which I have stated to be the practice of our com-
184 pany, is the practice of all companies, so far as I am acquainted.

(The defendant objects to the whole of the foregoing answer as irrelevant.)

Cross-examination subject to foregoing objections, which are not waived:

Q. Was the application for insurance in this case—signed by Albert W. Bailey, and filed with complainant's bill—was that application passed upon by you?

A. Yes.

Q. Was the insurance effected on the said application alone, or had you any other information in regard to this case?

A. The insurance was effected on that application, and we had no other information at that time in regard to this case.

Q. Did you make any other or further explanation to the said A. W. Bailey of the terms, conditions, or requirements, as to the risk proposed, than are contained in the printed form of said application?

185 A. No, sir; no other.

Q. Did you take any additional risk on the said Bailey; and if so, when and of what application?

A. We took additional risk of $4,000 on the 15th of July, and had a letter from Mr. Brewster, our agent, saying that Mr. Bailey wanted $4,000 in addition to the $6,000 we already had, for the benefit of Mrs. Bailey. Accompanying that letter was a note from Dr. Eliot, saying that he had examined Mr. A. W. Bailey, and found him in as good health as when first examined, and recommended an increased risk of $4,000.

(The defendant objects to so much of foregoing answer as relates to the contents of any written paper, and hereby gives notice to the parties and the solicitors to produce before the examiner the letter of Mr. Brewster, agent, referred to by the witness in the said answer.)

(Signed) E. FESSENDEN.

Sworn to and subscribed to before me this 3d day of October, A. D. 1868.

(Signed) M. ASHFORD, *Examiner.*

186 *Deposition of Doctor Ashbel W. Barrows.*

And thereupon the complainant produced as a witness Doctor Ashbel W. Barrows, who, being duly sworn, deposes and says:

I am consulting and examining physician for The Phœnix Company, and am also in general practice as a physician at Hartford, Conn. My

duty consulting physician is to examine all the applications sent in from abroad, and pass my judgement upon them in reference to the assurability of the case as regards health. If my judgement is adverse the case is rejected. I have made, to some extent, this subject a special study; I mean in reference to the health of the party. I examined the application in this case and approved it.

Q. If you had known that Albert W. Bailey had had either consumption or bronchitis within six months preceeding the application, what would have been your judgement upon the acceptance of the application?

187 (Objected to by defendant.)

A. In case of consumption it would have been disapproved of at once; if it had been barely stated that the party had had bronchitis, without any qualifications, it probably would have been rejected; it might have been deferred for further *for further* examination; it would not have been approved unless we had clear testimony that the bronchitis was of a mild character, of short duration, and had fully recovered.

Proceeding under the same objection, the witness says:

If I had been informed that the applicant had been under medical treatment for disease of the lungs, the application would have been disapproved. If I had been informed that his attending physician had pronounced to have consumption within two years, the application would have been *disaproved.* If I had known the habits of the applicant to be intemperate the case would have been disapproved; or if the report had shown that he was addicted to the habitual use of spirituous liquors he would have been rejected; or if I had known

188 that his father had died at the age of thirty-five with consumption, the applicant's age being twenty-four, it would have been rejected. If I had been informed that he had spit blood within six months he would have been rejected. If I had known that he had been under medical treatment within six months, and he had suppressed that fact in his application, it would have been disapproved or deferred for investigation; if it had to be decided at once, it would have been disapproved. All the above facts are material to be known in order to decide an application. We consider intemperance to increase the risk and make it more than usually hazardous; consumption and lung disease are *invaribly* rejected. If a man's father dies of consumption at an early age, the applicant being young, the risk is increased on the ground that it is an inheritable disease.

(The defendant objects to all the testimony *aftr* the *wrtten* question, on the ground that it is irrelevant, and other objections to be shown at the hearing.)

Q. Are the facts to which I have called your attention in regard

189 to the health and habits of the applicant and the death of his father, material to be known in estimating the risk of life; are they so regarded in the business of life insurance; and if so, to what extent do they control in determining the assurability of the applicant?

(Objected to as irrelevant.)

A. As regards the latter part of the question, such facts would invariably cause the rejection of the application by all companies, unless there be one or more companies that would take impaired risks for increased premiums. As regards the first part of the question, I state that such facts are considered material by all companies in granting policies; this is based upon the extent of my knowledge. I am ac-

quainted with the practice of the companies in Hartford, where there are six or eight companies; also with New York and Massachusetts companies. I have frequent occasion, upon application for insurance of parties who have been insured in other offices, to observe their practice, and also to consult with the physicians of those companies. Authors upon the subject of life insurance treat of the facts above referred
190 to as materially affecting the risks of life.

Cross-examination, subject to the foregoing objections, which are not waived:

Q. Was the application for insurance in this case—signed by Albert W. Bailey, and filed with complainant's bill—was that application passed upon by you?

A. It was.

Q. Was the insurance affected on the said application alone, or had you any other information in regard to this case?

A. Not in regard to the first policy issued; it was based wholly upon that application.

Q. Did you make any other or further explanation to the said A. W. Bailey of the terms, conditions, or requirements, as to the risks proposed, than are contained in the printed form of said application?

A. None.

Q. Did you take any additional risk on the said Bailey; and if so, when and of what application?

A. We did; a risk of $4,000; the dates referred to in Mr. Fessenden's answer to the same question are true.

(Signed) A. W. BARROWS.

191 Sworn to and subscribed before me this 3d day of October, A. D. 1868.

(Signed) M. ASHFORD, *Examiner.*

Adjourned until Monday, October 5, A. D. 1868, at ten o'clock a. m.

(Signed) M. ASHFORD, *Examiner.*

Cross-examination of Dr. James D. Hall.

MONDAY, *October* 6, *A. D.* 1868.

Met pursuant to adjournment, when Dr. James D. Hall, having been duly sworn, was cross-examined as follows:

Dr. Young, some time last year—in the summer, I think—showed me the notes of a case which he examined as the physician of an insurance company, which he had rejected, and that the case had been afterwards re-examined by Dr. Eliot and passed. On reading the testimony of Dr. Young I recognize the similarity between that case and the pres-
192 ent one. A skilful physician can judge the condition of the lungs better by auscultation with the naked ear than with the stethescope, in my opinion. I don't remember of any case of bronchitis running into galloping consumption in my experience. Capillary bronchitis is where it extends to the smaller, but not the smallest bronchial tubes; when it extends to the smallest, it develops pneumonia.

Q. Is consumption a disease sui generis, to which the lungs and the internal organism are alone exposed, or is it only a term indicative of a variety of morbid influences, any one of which, acting on the complex and susceptiable tissue of the lung and internal organs, may produce degeneration of the lungs, and cause death?

A. Pulmonary consumption is the local manifestation of a peculiar and morbid condition of the system, which is called tuberculosis. Galloping consumption is the unusually rapid progress of the ordinary tuberculous consumption, which usually affects one part of the lung or longs; acute consumption is where both lungs are thickly filled
193 with miliary tubercles, which may destroy life without even coming to maturity. I have known of cases of consumption causing death where there was no hemorrhage. Resonance remains unaffected when the disease is confined to the bronchial tubes. In bronchitis sputa comes from a secretion of the mucuous membrane lying in the bronchial tubes; in consumption it comes from the cavity in the lung caused by the softening of the tubercles, and which has made its way into the bronchial tubes by ulceration. Dr. Young made, according to my recollection, repeated physical examinations of the lungs. I have also read carefully the testimony of Dr. Eliot. The authentic mode of making a physical examination is by putting the ear to the chest, by percussion, and by measurement, and by observing inspiration and expiration; but Dr. Eliot does not state the signs that he discovered. If the second stage of tuberculosis had existed at that time, a competent man would have discovered it then more readily than in the first stage. If
194 he had found the lungs in an abnormal state, he could not have pronounced him a sound man.

Dr. Eliot stands among the most respectable of our physicians, and especially as a surgeon, and is an upright and honest man. Dr. Eliot has had the opportunity of making himself acquainted with the disease of the lungs, but I do not know whether he improved the opportunity or not. I can't say that I have made it a special *duty.*

Re-examined:

I think Dr. Young has given special study to the lung disease; he had fine opportunities at Bellevue Hospital to make this a study, inasmuch as he was under immediate tuition of Dr. Austin Flint, who is perhaps the best auscultator in the whole country. From what I have seen of Dr. Young I infer that he has a good ear as well as an intelligent judgement. An attending physician ought to be able to tell from the attending symptoms whether the patient died from tuberculosis or not.

(Signed) J. C. HALL, *M. D.*

195 Sworn to and subscribed before me this 5th day of October, 1868.

(Signed) M. ASHFORD, *Examiner.*

Adjourned to Thursday, the 13th of October, A. D. 1868, at 11 o'clock A. M.

(Signed) M. ASHFORD, *Examiner.*

Deposition of Sarah J. F. Seymour for complainant.

TUESDAY, *October* 3—11 *o'clock.*

Met pursuant to adjournment, when the complainant produced as a witness Mrs. Sarah J. F. Seymour, who, being duly sworn, deposes and says as follows:

I reside on Second street east, Capitol Hill. I know the defendant, Mrs. Bailey, in this suit. I knew Albert W. Bailey, her husband. I used to board with Mrs. Bailey in July, 1866, when she was a widow,

named Von Komecher. I think I stayed there about five or six
196 weeks. I am not positive. I saw Mrs. Von Komecher several times after I left there. I knew her after her marriage. That was in the last of June or July, last year. I was last at her house on E street, where she boarded the last of August. I did not go in the house the last time, but called at the door. I went on business. I saw Bailey a number of times after his marriage; we were quite well acquainted when we boarded there. He appeared to be a very sickly man—that is, from the time I first knew him. He had a very bad cough all the time. I offered to give him medicine, but he refused it. Mr. Bailey often complained of ill health, being in consumption. He always spoke about being in consumption while we boarded there, and afterwards, and seemed to be very feeble. He said that Dr. Young had prescribed medicines for him. Whilst I was boarding at the house he said that he was in consumption, and it was of no use taking what the doctor told him. He said that the doctor told him that he was in *consumtion*. I did not see
197 him, but heard him say he was taking cod-liver oil and whiskey at the doctor's prescription. He said that the doctor was there; but never saw him. This was whilst I was boarding there. I have seen Mr. Bailey under the influance of liquor whilst I was boarding there, and after I left. I have seen him under the influance of liquor in Mrs. Von Komecher's presence. We joined a temperance society. I took him to the "Good Templers," as Mrs. Von Komecher was very anxious for him to stop drinking. That was after I left Mrs. Von Komecher's and went to keeping house. I took him to the hall on Ninth street. Mrs. Von Komecher accompanied us. He was not at that time under the influance of liquor. The room of the "Good Templers" was on the third floor of the hall. I don't recollect any remark made by Mrs. Von Komecher on going up stairs, at that time, about his health.

Q. Do you recollect of her making any remark at that time in regard to his health and about his getting his life insured?

(Objected to by defendant.)

A. She said, I think, as we were going up the last flight of
198 stairs, she wished him to join the temperance society, and to leave off drinking, in order to be braced up to get his life insured.

(The question repeated, the witness answers:)

On going up the last flight of stairs I think she said she wished Mr. Bailey to leave *of* drinking, and get braced up so as to have his life insured, or she would not marry him. Mr. Bailey seemed to be anxious to be married, but Mrs. Von Komecher said she could not think of marrying a man with one leg, and sick besides. This was while we stood at the door. This was all said in a joking, good-natured manner. She said at that time that the Bailey family was consumptive. Mrs. Von Komecher, the first day I went there to board with her and afterwards, told me that she was engaged to be married to Mr. Bailey, and Mr. Bailey told me so also at the same time. Mr. Bailey afterwards expressed to me several times a desire to marry Mrs. Von Komecher. He
199 told me that Mrs. Von Komecher was willing to marry him if he got his life insured. He seemed to think he could not get his life insured, he was so sick. Mr. and Mrs. Bailey have come to my house together; it was somewhere in the first part of August, last year, the last time they were there together. He was very feeble. They had been there two or three times before that. We generally sat in the dining-room; we conversed together in the dining-room. Mr. Bailey said during the conversation at the last visit that he wanted to move

from his house on E street; that he was sick and feeble, and couldn't bear to die there. He told me in that last visit that he had had his life insured. He generally spoke of it when we met, he was so sickly. The first time he ever spoke to me about having his life insured was when he was in his bed sick, in his own house on E street, after he had had it insured. My husband was with me, and he told "Lizzie to get him the policies, and I think she handed them to Mr. Seymour, my husband. He called Mrs. Bailey "Lizzie." Mr. Seymour looked
200 at them, and said to Mr. Bailey, "Do they insure dead men in this office?" He said to Mr. Bailey he did not see how he passed the doctor. Mrs. Bailey replied, "The doctor thumped him very hard, he nearly fainted," and she got him out of the office as soon as she could to give him something to strengthen him. I don't think she said what she gave him. That is all I recollect of the conversation at that time. Mr. Bailey laid in bed very feeble, and did not say much; he coughed very much. I asked Mr. Bailey at that time how he got to the doctor's office. He said that Lizzie had been giving him things to brace him up so as to get him there. He said that "Lizzie had been a great deal better to him since they were married, giving him things to strengthen him." I can't call to mind what Mrs. Bailey replied.

Q. I want to know what Mrs. Bailey said during this conversation, after Bailey said, "Lizzie had been giving him things to brace him up, so as to get him to the doctor's office."

A. I don't seem to call to mind.

201 Q. Did she state why she had given him strengthening things?

A. I can't seem to call to mind at that particular time what was said.

Q. Were you specially conversing with her or Bailey at that particular time?

A. I was conversing with them both.

Q. Now state whether or not Mrs. Bailey ever told you, in any conversation at any time, why she had given Bailey before they were married strengthening things.

A. She gave them to brace him up to have his life insured, as he was a sickly man.

Q. Did she ever tell you what was the matter with Bailey, and what did she say?

A. She did; she said that Mr. Bailey was deep in consumption, and could not live long.

Q. Did she ever state this before her marriage with Bailey?

A. She did; when I boarded there and after I left.

Q. Did she ever tell you why she did not marry Mr. Bailey?

202 A. She told me a number of times that she would not marry Bailey without his life was insured.

Q. Whilst you were boarding at the house on E street, did Mr. Bailey ever give you any articles of clothing; and, if so, state what and wherefore?

A. He gave me some shirts; they were too large. He wished me to cut them smaller, and I did so.

Q. Did you measure his chest at the time? and, if so, state how large it was, and what you said about it, and his reply.

A. I measured his chest; it was a great deal smaller than my husband's. I don't recollect how large it was. I said to him it was not as large as my own. He said he was sick; he had been stout, but sickness had brought him down to a shadow.

Q. Do you know how large your husband's chest is? and, if so, state how large.

A. It measures 37, I think, without vest or coat. I am in the habit of cutting his shirts by measure.

203 Q. Was that the size of your husband's chest when you boarded on E street?

A. I didn't measure him then; I made his shirts for him in June, and measured him, and went to that house in July.

Q. What did he measure in June?

A. He measured 37.

Q. After you fixed those shirts for Mr. Bailey, did you frequently see him?

A. I did.

Q. Did you see him at any time in the June of 1867?

A. I seen him just before he was married.

Q. What was the appearance of his frame at that time, and the apparant size of his chest?

A. Very feeble and failing very fast; the size of his chest was very slight, very slender.

Q. Was it larger or smaller than when you made the shirts?

A. I judge it was a great deal smaller; he said that he wished me to make him some more shirts; I said he was so small, that I would not know how to make them.

204 Q. Did you ever go to Bailey's house in August, 1867? and, if so, state whether you had any conversation with Bailey concerning his eating.

A. I did have a conversation with him on the 23d of August about his eating.

Q. State what the conversation was.

A. Mr. Bailey set inside the hall, near the door; I stood in the kitchen-door; he called to his wife for some eggs to be broiled rare, so that he could eat them; they were sent to him, but he returned them to the kitchen as being so as he could not eat them; he said to his wife in rather a melancholy way, that he thought she might give him something he could eat, that wasn't cooked so much; she said that was good enough for him, and then left; in a short time I returned, and he seemed to be very much dissatisfied about his food; he seemed to think that if he could get moved out of the house he could be settled, and would get better. He told this to me.

Q. Did he state that he had not had food for some time?

205 A. He stated at that time that he hadn't eat half an egg-shell full for two days.

Q. Do you remember whether or not he ever went to Teutonia Hall; and if so, what *occured*?

A. I don't; only what Mrs. Von Komecher and Mr. Bailey told me.

Q. Please state what Mrs. Von Komecher told you about his going to Teutonia Hall.

A. She said she went in and found Mr. Bailey drinking beer with the girls; she asked him what he was doing there; he then rose, and she gave him such a slap aside of the head that he reeled and nearly fell over; she then told him he could stay, and she came out; this took place in the evening, and was before their marriage.

Q. Did you see Mr. Bailey shortly afterwards or not?

A. I did; I can't say how long after—it may be two or three days.

Q. When you saw him two or three days afterwards, did you

206 see a mark from a blow on his face? And if so, state what he or Mrs. Bailey said about it.

A. He said he had marks on his face where she struck him and also marks on his legs where she struck him with a horsewhip; I saw the side of his face was somewhat swollen, and he showed the blow by his fingers; no more was said about it then; she told me that he rode up to the door on a pony for her to look at, and as he came to the door he had a horsewhip in his hand, and she took it, and that she gave him three or four hits with it as hard as she could; the horsewhipping was the morning after she struck him a blow upon the face; I took it in fun first, thinking it was not so, but they both said it was so; I told Bailey that he was one out of a thousand that would stand to be horsewhipped before marriage.

Q. State whether or not Mr. Bailey ever told you that he had been discharged from office.

A. Mr. Bailey told me he had been discharged; that his health
207 was so poor that he could not attend to his office duties; this was before marriage.

Q. Do you or not know whether Bailey was in office after his marriage?

A. I know he was not.

Q. Did you ever go to his house on E street after the 23d of August, 1867, of which you have made mention?

A. I was to the house once after the 23d, but not to go in; I called there on business.

Q. Did you ever go to his house on Capitol Hill?

A. I did not while he was living, but did go after he was dead, and when he was laid out.

Q. Had you been in that house before?

A. I had, in order to rent it for myself.

Q. Please state why you did not rent it.

A. The house was very damp, and my husband objected to it.

Q. What was the condition of the house when you went to it after Bailey's death, whilst he was laid out?

208 A. The house was very damp; he was laid out in the front parlor.

Q. How do you know it was damp?

A. The walls were very wet; you could smell the dampness very plainly, and see it.

Q. Whilst there at the time did you observe the coffin lid; and, if so, what age was inscribed upon it?

A. I did observe it, and I think it was twenty-five.

Adjourned until Wednesday, October 14, 1868, at 9½ a. m.

——— ———, *Examiner.*

WEDNESDAY, *October* 14, 1868—10 *o'clock, a. m.*

Met pursuant to adjournment, when the examination of Mrs. Sarah J. F. Seymour was continued as follows:

Q. You spoke yesterday of Mr. Bailey showing his policies of life insurance to you whilst he was sick in bed; did he ever show them
209 to you afterwards; and, if so, did any conversation ensue; and, if yea, what conversation?

A. He did show them to me one morning. I said to Mr. Bailey, "Why, you got two policies." He said, "Yes." I said to Mrs. Bailey, turning around to her, "I should not think you would get two policies."

She said, "She got one herself, and paid for it out of her own money, and she didn't think she would have the second premium to pay on the policy, as Mr. Bailey was far gone with the consumption." Mr. Bailey replied that he was going to leave her better off than her first husband.

Q. Do you remember when this took place?

A. I think *I* was near the first of July.

Q. Did Mr. Bailey ever tell you of what disease his father's family died? and, if so, tell the nature of that disease.

A. He said his father's family was consumptive, and he thought that he had had consumption since he had his leg cut off; [that it had always troubled him; that the stump didn't heal. He often spoke of the stump not healing, and being very painful always.]

210 (The enclosed part of answer objected to as not being responsive to the question.)

He said that his whole family had died of consumption.

Q. You said yesterday that you took Mr. Bailey to the Good Templars; please state why you took him there.

(Objected to by defendant. Question withdrawn.)

Q. After the night that you took Mr. Bailey to the Good Templars' Hall, did you ever see him there afterwards? and, if so, state his condition.

A. I went to the house, and took him (Mr. Bailey) and Mr. Bailey's brother to the Good Templars. Mr. Albert W. Bailey was in liquor at the time. I introduced him to Mr. Gonzalves, our Chief Templar at the time, I think; I am not positive; he had been. This introduction was in the hall. Mr. Gonzalves shook hands with him, and asked him "if he was a Good Templar." He said, "Yes." Mr. Gonzalves re-

211 plied, "I am afraid not." Mr. Bailey was very feeble at the time, and said he could not stop but a short while, as his health was very poor. He was under the influence of liquor at the time.

Q. Do you remember at what time of the year, and what year, this visit to the hall, and this introduction to Mr. Gonzalves, took place; and, if so, when?

A. I think it was on the 18th of April, last year, 1867, in the evening.

Cross-examination:

Q. How long had you resided in Washington before you became acquainted with Mrs. Bailey?

A. I hadn't been here but a short time; I don't recollect exactly.

Q. Where had you resided in Washington before you formed her acquaintance?

A. On 9th street.

212 Q. Had you been boarding or keeping house up to the time you formed Mrs. Bailey's acquaintance?

A. I was boarding.

Q. Are you the wife of Henry D. Seymour, who was examined in this case?

A. My husband's name is Henry D. Seymour. I can't say if he was examined in this case or not.

Q. Do you not know that he left his home to be examined in this case?

A. I do not.

Q. Have you had any conversation with him as to the testimony he could give or had given in this case?

A. He said some one came to the office bothering him about testimony.

Q. Is that all he said on that subject?
A. No, sir; he said he didn't wish to be bothered with such a case.
Q. Is that all he said?
A. No, sir.
Q. What else did he say on that subject?
213 A. He said he had been here, and he had said as little as he could, and that he had got off by saying as little as he could.
Q. Did he tell you the substance of what he had testified?
A. He did not.
Q. Did he ask you what you knew about Mr. Bailey's health or habits of temperance; or what Mr. or Mrs. Bailey had said to you about either his health or temperance, or their getting his life insured?
Q. He had no occasion to ask me, because he knew.
(Question repeated.
The witness repeats the answer.)
Q. Was Mr. Seymour present with you at all the interviews you have testified to as occurring between yourself and Mr. and Mrs. Bailey, and each of them?
A. No, sir; he was not.
Q. How, then, could he know all that you have testified to about Mr. Bailey's health, temperance, and their getting his life insured?
214 (Objected to.)
A. My husband used to board in the house, and Mr. Bailey used often to converse with him as a friend, thinking he would give him good advice.
(Answer objected to as not responsive.)
Q. Did you not tell your husband all the facts you have now testified to, which occurred when he was not present?
A. I did not tell him all, but some things I would speak of to him.
Q. Did you not have a conversation with your husband and a third person as to what facts you could testify in this case?
A. I don't remember of any such conversation.
Q. Have you talked with any one, and stated what facts you could prove in this case?
A. I have spoken to one or two persons about Mr. Bailey getting his life insured. I have been spoken to about this case, but not about what I could prove, because I did not wish to prove anything.
215 Q. Was your husband present at any of these conversations last referred to?
A. He was at some of them.
Q. Did he take any part in them?
A. He did not, because he thought it beneath his notice.
Q. Do you mean to be understood that you have never communicated to any person what facts you know in relation to this case before you were examined at a witness?
A. I think we spoke to one or two persons about Mr. Bailey's life insurance. Mrs. Lawrence, I think, spoke to me about it, saying he was a sickly man; that she did not know how he got insured.
Q. Is Mrs. Lawrence the only person you can now recollect?
A. No, sir; Mr. Jennings.
Q. Is there any one else you can recollect?
A. I don't recollect any one in particular. There might have been others, but I don't recollect.
Q. Do you know Mrs. Mary Sprague?
A. I do not. I never saw her, to my recollection.
216 Q. Who is Mr. Jennings you spoke of?

A. gentleman who boarded with Mrs. Von Komecher at the same time I did.

Q. Have you ever spoken with Mr. John A. Wise on this subject?

A. I never heard the name before.

Q. Can you recollect when you first mentioned the facts, or any of the facts, to any third person, which you have now testified to in chief?

A. The first one I spoke about to was Mrs. Bailey herself.

Q. Anybody else?

A. There might have been others, but I don't recollect just now.

Q. When did you first mention them to anybody other than Mrs. Bailey?

A. I couldn't say what time.

Q. Was it after Mr. Bailey's death?

A. It was before Mr. Bailey's death.

Q. When and where did you have a conversation on this subject with Mrs. Lawrence?

A. It was when she (Mrs. Lawrence) lived in "Carroll Place."

217 Q. Was that before or after Mr. Bailey's death?

A. It was before and after.

Q. Did she take any memorandum of the facts stated by you in those conversations?

A. Not that I know of, but her husband said he would like to keep a memorandum, before his death, concerning Mr. Bailey.

Q. Is Mr. Lawrence now living?

A. He is not.

Q. Did Mr. Jennings make any memorandum of the facts stated by you?

A. I couldn't say. I know nothing about it.

Q. Did you never, before you were summoned as a witness in this case, state minutely and in detail the facts to which you could testify?

A. I don't think I ever did.

Q. When and where did you first become acquainted with Mrs. Bailey?

A. On E street, when she kept boarding-house. I went to board with her in July, 1866.

Q. What date in July?

A. It was somewhere about the middle of July, I think.

218 Q. When did you first become acquainted with Mr. Bailey?

A. At the same time, there.

Q. Can't you fix with more accuracy the date when you first went there?

A. I don't think I could.

Q. When did you leave Mrs. Von Komecher's; that is, on or about what day did you leave Mrs. Von Komecher's?

A. I couldn't say. I should think about the forepart of August. It might have been later, though.

Q. How long had you been there when she told you of the incident at Teutonia Hall, and about the horsewhipping?

A. That was two months after I left that this happened.

Q. Was any one present, and, if so, who, when she told you of those two things?

A. One of her little girls was present, and her servant also was in the kitchen, where it was told.

Q. Do you know that servant's name?

219 A. I think they call her Kate.

Q. Was Mr. Bailey present on both occasions when she told you of those two incidents?

A. He was present the last time.

Q. What interval of time was there between her telling you about Teutonia Hall and the horsewhipping?

A. It was but a day or two; it might have been three.

Q. Did not the horsewhipping occur on the morning after the affair at Teutonia Hall?

A. Mrs. Bailey told me it was the morning after.

Q. Did she tell you this the morning after, or two or three days after she said it had occurred?

A. It was a short time after it occurred; a day or two afterwards.

Q. Did she ever tell you when that visit to Teutonia Hall occurred?

A. She said it had been but a day or two.

Q. How long had you been boarding at Mrs. Von Komecher's
220 when Mr. Bailey told you Dr. Young said that he had the consumption, and that Dr. Young was visiting him at the house?

A. It was when I was boarding there; I had been there but a very few days.

Q. Do you know whether Mr. Bailey was or not at that time taking whiskey and cod-liver oil?

A. I don't know; but he told me he was taking it for consumption.

Q. Do you know whether or not he continued after that time to drink whiskey and take cod-liver oil; and, if so, how long did he pursue that treatment?

A. He told me he was taking cod-liver oil and whiskey; I don't know whether he continued or not, only from what he told me; he told me he was.

Q. Do you know from what he said, or from your own observation, whether he was not using that prescription on the 18th of April, 1867, when you say you went with him to Temperance Hall?

A. He did not tell me he was taking any medicine at that time.

221 Q. When did you first learn that Mr. Bailey's life was insured; and what date, as well as you can recollect?

A. It was in June, after the July I boarded there; he laid in bed sick, the first I knew of it; I should judge it was in the latter part of June.

Q. What was said at that time, and by whom was anything said about the insurance?

A. It was spoken of by Mr. and Mrs. Bailey; Mr. Bailey spoke and said, "that Lizzie ought to be satisfied; he had got his life insured, and that she was going to be better off than when she was with her first husband; that he would not live long." He even (shoved) up his shirt sleeve, and wanted me to look how poor he was. I think I spoke to her about her paying out so much money in getting out two policies. I was alone; my husband was not with me at that particular time when he (shoved) up his sleeves.

Q. How did you know there were two policies; did they show them to you?

222 A. Mr. Bailey told Lizzie to take them out of the little drawer and show them to me.

Q. What room did Mr. Bailey occupy when you boarded in the house?

A. He occupied the attic-room.

Q. What room did he occupy when you saw him sick in bed in June, 1867?

A. It was the back-parlor chamber when I saw him in bed—that is, the room over the back-parlor.

Q. You say that Mrs. Bailey took the policies out of a little drawer; what little drawer do you mean?

A. A drawer in the beureau that sat in the room.

Q. Can you now fix the date of that interview more accurately than in the latter part of June?

A. I don't think I can.

Q. Was it after the 15th of June?

A. It was the latter part of June.

Q. Was it after the 20th of June?

A. I think it was the very latter part of June; it might have been in July.

223 Q. Did you ever see Mr. Bailey out of his bed or out of the house at any time after that; and, if so, when?

A. I think I met him on the street a number of times, and he was at my house after this.

Q. Where were you living at that time?

A. Second street east, Capitol Hill.

Q. How often was he there?

A. I think he was there three times; twice, I am sure.

Q. How far apart were these visits?

A. One was on Sunday; it may be some weeks after I saw him in bed in July.

Q. When was the next one?

A. It was in August.

Q. Did he use a crutch or had he an artificial limb?

A. He had an artificial limb, and walked with a cane when he came to my house.

Q. Did he usually walk with or without a cane from the time you first knew him?

A. He always walked with a cane; he told me his stump was sore, and he could not bear his weight.

224 Q. What time of the day was this interview in the latter part of June?

A. The first interview was in the evening, with my husband; the second was in the daytime.

Q. Which interview occurred first, the one with your husband, or the one with you?

A. The one with my husband.

Q. Where did you reside when you and your husband had that interview with Mr. and Mrs. Bailey?

A. Second street.

Q. On each of these occasions respectively, who introduced the subject of life insurance; and what was said?

A. Mrs. Bailey introduced the subject, and Mr. Bailey answered on the first occasion. Mrs. Bailey said she had got Bailey's life insured, or they had; spoke kind of lightly about it. Mr. Bailey said, "Lizzie, get them and show them to Mr. Seymour." It was introduced the same way when I was there. She said Mr. Bailey wasn't going to
225 live but a short time, he was so far gone with consumption, and raised constantly; she said she wouldn't have the second premium to pay.

Q. How came the policies to be produced at that time?

A. I can't say exactly how.

Q. How long was it after the interview which you and your husband had and the policies were produced before you had this interview?

A. It was but a short time.

Q. When did Mrs. Bailey go to live on Capitol Hill?

A. In September, I think; I heard so.

Q. How long was she there before Mr. Bailey's death.

A. A few weeks, I think.

Q. Did you continue to visit them until they left E street.

A. I visited them in August; the 23d was the last day to go in the house.

Q. How often did you go there after you ceased boarding there, down to the 23d of August.

226 A. I visited there constant; some days I would be there twice a day, and sometimes three times a day.

Q. Where did you live during that time?

A. I lived on G street, I think, between 13th and 14th, a short time; I then went to Thaddeus Stevens' house on B street, Capitol Hill; I don't recollect how long, some weeks; we boarded next at Mrs. Murray's, on Capitol Hill; I then went north, and was gone about five or six weeks; when I returned, I went to Carroll Place, Capitol Hill; from there went where I now live in March, 1867.

Q. Do you mean to say that during all this time you continued to visit Mr. and Mrs. Bailey almost every day, and sometimes three times a day?

A. I mean to say I was there one day three times, another day I recollect being there twice, and often once a day.

Q. When were you there three times; another day I recollect being there twice, and often once a day.

227 Q. When were you there three times in one day, and for what purpose did you go?

A. I went there to pay her some money, and she wasn't in; this was before their marriage, in the spring; I think about the first of May, for she then showed me her wedding dress.

Q. When were you there twice in one day, and what did you go for on that occasion?

A. When I was on G street I went there twice in one day to see Mr. Bailey, who was sick; it was in the morning, and in the evening.

Q. Did you make a friendly visit to Mr. or Mrs. Bailey, or either of them, on the 23d day of August, 1867?

A. I went there on business, and on a friendly visit too.

Q. Who did you see on that visit?

A. I saw Mr. and Mrs. Bailey, the servant, and children.

Q. Did you go into the house?

A. I did; I went into the kitchen, and sat down.

Q. Was that the last visit you ever made to them while he was living?

228 A. That was the last time I was ever in the house; I called at the house afterwards on business.

Q. At what time did you call there on business?

A. I called at the door on 30th of August.

Q. Is there anything that fixes those two days particularly in your mind?

A. Yes, sir.

Q. Did you ever visit them after that time during his life?

A. I did not.

Q. Was it before or after the 30th of August that you had the conversation with Mrs. Lawrence in regard to Bailey's life insurance?

A. It was before and after, both.

Q. You say that while you boarded at Mrs. Bailey's on E street, she told you that Mr. Bailey was in deep consumption, and could not live

long; was that before or after he told you Dr. Young said he had the consumption?

A. I think it was before, but am not certain.

229 Q. In what way did you measure Mr. Bailey's chest when you fitted the shirt for him; did you take the circumference of his chest or the breadth between the shoulders in front?

A. I measured round under the arms with a tape measure.

Q. What is the measure of your own chest?

A. I measure 34, I think; I measured for a dress.

Q. When did you take the measure?

A. I don't think I have taken my measure for some months.

Q. Has it varied much in the last three years?

A. I think not; I am not quite as fleshy as I was two years ago, last June, when I first came to Washington.

Q. Is there any standard measure of the chest by which healthy men are judged?

A. I don't know that I have ever conversed on the subject, except when I was in Hampden Hospital; I conversed with doctors about hollow-chested and narrow-chested men being apt to be consumptive, and not being able to bear wounds and amputation.

230 Q. How often did Mr. or Mrs. Bailey, or either of them, show you those two polices of insurance?

A. I don't recollect but twice positive.

Q. Did you ever advise or assist Mrs. Bailey in procuring a house to live in.

A. I did.

Q. When did you do this?

A. In the month of August, 1867.

Q. Where did you advise her to go, and did you look at any house for her, and recommend it to her?

A. She asked me to look for a house. I told her I would do so, and I found one house vacant on C street, on Capitol Hill. She looked at the outside and did not like the locality of it. I told her I would be on the lookout for one, and let her know at the earliest moment. I engaged a house for her on A street, Capitol Hill, from Mr. Scott, before the family left the house, (a German family.) I went down to Mrs. Bailey's house on E street, and told her there was a house to be empty in a few days, and if she would like to look at it, and see if

231 she would like the locality, and engage it from Mr. Scott, as he was the owner. She came up to my house, and I went out on A street and showed her the house. She said he was very sick and couldn't get up that day, but would come the next morning. They came the next morning. We looked at the house—Mr. and Mrs. Bailey and I. He appeared to be delighted with the house, and wished to engage it at once. I took him to Mr. Scott's shop on Second street. He and Mrs. Bailey engaged the house; paid $5 to Mr. Scott. Mr. Scott said $5 would not secure the house, but would be so much on the month's rent. Nothing secured the house but a month's rent in advance; that Mr. and Mrs. Bailey were strangers to him; and that he would rent them the house on my recommendation. Mr. Scott did not let them have the house. It was undergoing repairs and he could not get it ready for them in time, but he rented them another house on Fifth street, Capitol Hill. The house on Fifth street was where I saw Mr. Bailey's corpse.

232 Q. Was this before or after the 23d of August?

A. This was before the 23d of August.

Q. How long before the 23d of August, that you and Mrs. Bailey had the interview with Mr. Scott?

A. I couldn't say how long before.

Q. At what date were Mr. and Mrs. Bailey to have that house?

A. At the first of September, if he could get it ready.

Q. When did they, in fact, take a house from Mr. Scott?

A. I don't know.

Q. You have said that Mrs. Bailey asked you to look for a house for her; did you charge her anything for that service?

A. I did not, but she said she would give me $10.

Q. Did she ever pay you the $10?

A. No, sir; I wouldn't have taken it if she had offered it. I thought she was joking. I thought she said it in a laughing manner.

Q. Did you and she ever have any words about the house and the $10?

233 A. She came to my house and had some words, herself using very bad language. My husband told her to leave the house; he wanted no words with her, nor any $10.

Q. When did this happen? Fix the date as precisely as you can.

A. It was in August; it was after the 23d of August.

Q. Did she set up no other cause, quarrel, or complaint against you at that time except that of the $10.

A. She did; about furniture she ordered me to buy in presence of Mr. Seymour; two or three different times in his presence.

Q. Was this incident before or after the 30th of August?

A. This was before.

Q. Had you bought the furniture as you say she requested you, and had she refused to take it?

A. I was furnishing my house, and she asked me to buy some furniture for her, as I understood it better than she did; she
234 then refused to pay for it, saying Mr. Bailey would live but a short time.

Q. In the course of that interview, did you not tell her you would make her suffer for it, and you would yet get even with her, or words to that effect?

A. No, sir; no such language was ever used in any manner, shape, or way.

Q. Had you not, previous to that time, borrowed from her $30, and did you not refuse to pay for it?

A. I never borrowed $30 from her in my life. I borrowed $15 from her. The 23d day of August I bid off some furniture for her, but didn't care whether she took it or not. I needed it myself. It was very cheap; that is the reason I bid it off. I bid it off in a gentleman's house on North A street, where there was no children to injure it. I was passing by, and went in, as a friend would do to one, to request a favor, knowing her to be ill in health and Mr. Bailey very sick at the
235 time. I left my house-work, company, and my servant, and went to her house in a friendly manner; asked her if she had not got a note from a boy to come and get her furniture that I had bid off at auction. She said in a very cross way, "What furniture?" Mr. Bailey said, "Don't you remember you told Mrs. Seymour to bid off furniture, times without number?" She says, in a way of conversation, she did'nt want the furniture, as he wasn't going to live but a few days, and she wasn't going to furnish but one room. I says, "Mrs. Bailey, I have been in the habit of buying furniture from these men, and I must take it; my word is my bond." It was Mr. Williams I bought from, who bid

the furniture off, of the firm of Green & Williams. I said to Mrs. Bailey, "The way you act you seem to think I want to speculate on this furniture, but if you want the bill you can go to Mr. Williams and get it yourself, and Mr. Williams would deliver you the goods and prices, so you need not take my word; I have the bills of the furniture." After she refused to take the goods, I took them myself, and have them now myself in my house.

236 Q. What has this to do with the money you borrowed from her?

A. When she throwed the furniture on my hands I hadn't ready money, so I told her she must advance me $30; she said she couldn't, and I told *he* $15 would do; this was on the 23d. I paid her on the 30th, and have the receipt now in my house.

Q. Now was this a subject of discussion at the time you say your husband told her to leave the house?

A. It was.

Q. After your examination was closed yesterday, and before you were examined this morning, had you any conversation with anybody with regard to what further evidence you could give in this case?

A. I spoke to no one about it, except Mr. Appleby, outside of my own doors.

Q. Did you go to him and tell him that you had omitted to state certain facts, and tell him what they were?

A. I did not. I spoke to him about some things this morning.

237 Q. Why did not tell us yesterday that Mr. Bailey had shown his policies to you when you were alone, and what led to your giving that testimony this morning?

A. It occurred to my mind that I saw the policies twice, and I thought I gave the testimony yesterday.

Q. How did you find out that you had not given it?

A. I don't know it now, except what you say here.

Q. Do you know a man named A. M. Sprague, who is or was a policeman?

A. I do not.

Adjourned until Thursday, October 15, 1868, at 10 o'clock, a. m.

M. ASHFORD, *Examiner.*

THURSDAY, *October 15th*, 1868—10½ *a. m.*

Met pursuant to adjournment, when Mrs. Sarah J. Seymour was re-examined as follows:

Re-direct:

238 Q. In your cross-examination on yesterday, in reply to a question by defendant's counsel as follows: "Do you mean to be understood that you never have communicated to any person what facts you knew in relation to this case before you were examined as a witness," you said you spoke to several persons, naming Mrs. Lawrence and Mr. Jennings. Have you mentioned it to any person else; and, if so, who?

A. I don't recollect any person in particular, except Mr. Appleby.

Q. When did you mention them to Mr. Appleby?

A. It was in the afternoon and evening before I came here. I had been north some weeks, and had forgotten all about the case, and mentioned it to no person for months. I supposed it was settled.

Q. What do you mean when you say you had forgotten all about the case?

A. At Mr. Bailey's death there was considerable said at the time;

seeing Mr. Bailey's death, about his death and insurance, and Mrs. Lawrence speaking to me about it, and how sickly he was when
239 he moved into the house; he was so sick he could hardly get into the cars. Mrs. Lawrence told me that.

Q. Do you mean to be understood that you had forgotten the facts which you have testified in this case?

A. I had not forgotten them entirely, but they had slipped my memory some.

Q. You state in your cross-examination that Mr. Bailey said he was taking whiskey and cod-liver oil, and that Dr. Young had been at his house several days after you first went to the house on E street. Did he tell you what Dr. Young was attending him?

(Objected to, because, first, the witness has not so stated on her cross-examination; and, second, because it is not responsive to any matter brought out on cross-examination.)

A. He did not.

Q. When he said that Dr. Young was visiting him, do you know of your own knowledge to what Dr. Young he referred?

(Objected to for the same cause.)

A. I do not.

240 Q. You state in your cross-examination that you recollect but two instances in which the policies of insurance were shown to you; what was Mr. Bailey's condition on both occasions?

(Objected to because the witness has already testified in full in her examination-in-chief as to this matter, and no new fact on this subject has been brought out in her cross-examination.)

A. Very sick and feeble; in bed both times.

Q. Are you sure he was sick in bed when the policies were shown to you in your husband's absence?

(Objected to for same reason.)

A. I am.

Q. In measuring Mr. Bailey's chest, what measure did you use?

(Objected to for same cause.)

A. I used a tape-measure. I take my tape-measure and book of instruction always with me, as I have an agency to practice in this place or any other place. I went to the mayor to see if there was any license to pay, and he said there was not.

241 Q. You spoke, in cross-examination, of taking measure of yourself for making a dress; has it been your business to make dresses for any other persons than yourself?

(Objected to because, first, the statement referred to as made by the witness was volunteered, and not responsive to any question put to her; and, second, the question does not relate to any matter responsive to facts brought out on cross-examination.)

A. It has.

Q. In pursuing that business, have you ever done it according to any form or book of instructions; and, if so, whose form or book?

(Objected to as new matter.)

A. I have; Mrs. D. A. Inwood I have the agency for her.

Q. In your cross-examination you state you measured the circumference of Mr. Bailey's chest, under the arms, with a tape measure; in doing so, did you take the measure according to any prescribed form or book of instructions; and, if so, whose?

242 (Objected to.)

A. I took it by Mrs. Inwood's, and by my own judgment, in order to make shirts.

Q. Is Mrs. Inwood's book intended to include measurements of men's shirts?

(Objected to.)

A. It is.

Q. Have you the receipt of Mrs. Bailey for the payment of the $15 on the 30th of August, 1867, in your possession?

(Objected to as irrelevant.)

A. I have it.

(The receipt offered in evidence, and marked Exhibit L. B., No. 1.)

Q. Did you ever borrow any other money from her?

A. I have.

Q. When, and what sum?

A. I borrowed $3 00 at one time, and $1 50 at another; that is all I have any recollection of.

Q. Have you ever paid back that money to Mrs. Bailey?

243 A. I have; that was on an occasion when I went there three times; I don't know whether she was married or not at that time.

Q. When you went to her house on E street, on the 30th of August, 1867, and did not go in, do you know whether she had moved any of her furniture away, or was preparing to do so?

(Objected to as irrelevant and not responsive.)

A. The furniture belonged to the landlord; she had no furniture, to my knowledge.

Q. Do you know that she lived there at that time?

(Objected to for same reason.)

A. She told me that Mr. Bailey was sick there, and she expected to move in a day or two; she wished me to go in to see Mr. Bailey, who was sick; I did not go in.

Q. You stated yesterday that, after the furniture difficulty, Mrs. Bailey came to your house, and had some words herself, using very bad language; I wish to know what language she used.

(Objected to, as the statement about Mrs. Bailey was not responsive but volunteered.)

244 A. She used very bad language; she called me a damned liar, for one thing, about the furniture.

Q. Can't you think of something else?

A. I can think of a number of things; she called my husband a damned liar, and said of several things, "It is a damned lie."

Cross-examined:

Q. When and where did you speak with Mr. Jennings on the subject of Mr. Bailey's health, or his life policy?

(Objected to because not relative to anything brought out in the redirect.)

A. I don't think I ever spoke of the policy to Mr. Jennings; I spoke with him about Mr. Bailey's health at Mr. Bailey's, when I boarded there.

Q. Did you not go to Mr. Jenning's office and talk with him there about Mr. Baileys health, and the insurance of his life?

(Objected to for same reason.)

245 A. I might have spoken about it to him at his office; I have no particular recollection; or Mr. Jennings might have spoken to me about it.

Q. Did you say anything to Mr. Jennings at his office about this suit, or the dispute between Mrs. Bailey and the insurance company, or as to the condition of his health at the time and before the policy was made?

(Objected to for same cause.)

A. We might have said something, but I have no recollection, as we were in the habit of speaking of his health when we met; it is my impression that we did.

Q. Did you remind Mr. Jennings of anything connected with Mr. Bailey's health, and say anything to him about the materiality of his evidence in this controvery?

(Objected to for same cause.)

A. I have no recollection of it; we might have spoken of it in the course of conversation.

Q. Were any of these interviews subsequent to Mr. Bailey's death?

246 (Objected to for same cause.)

A. I do not recollect positive, but I should say not.

Q. Was any of them after the 30th of August, 1867?

(Objected to for same cause.)

A. I do not recollect at the present time.

Q. Did you not go to Mr. Jennings' office to get him as a witness against Mrs. Bailey's claim?

A. I don't think I ever did.

Q. Can you not state positively whether you did or did not, after the death of Mr. Bailey, go to Mr. Jennings' office to talk with him about his knowledge of Mr. Bailey, with a view of having his testimony against Mrs. Bailey's claim?

(Objected to because already answered.)

A. I never went to Mr. Jennings' office in order to talk with him on that subject. I went to his office to see about renting a room to him. This might have been after the death of Mr. Bailey; I do not recollect.

247 Q. Do you recollect whether in that or any subsequent conversation with Mr. Jennings he remarked, in reply to an observation of yours, "Why are going to turn against Mrs. Bailey?" or words to that effect?

(Objected to as not elicited by the re-direct, and as being irrelevant.)

A. I do not recollect any such word.

Q. You say you mentioned to Mr. Appleby what facts you knew in relation to this case. Had you more than one interview with him before you were examined, and who was present at those interviews, or either of them?

A. I think my daughter was present part of the time at both interviews, and my husband part of the time in the evening.

Q. Did your husband take any part in the conversation between you and Mr. Appleby in relation to this case?

A. He did not, and said he wished me to say as little as I could.

Q. When did you leave your home to go to the North in the year 1868, and when did you return?

248 A. The first day of September, and got back about the first of October; it may have been the sixth or eighth.

Q. Please to repeat the method directed by Mrs. Inwood of measuring men for shirts.

A. We measure across the breast and around the chest, across the shoulders, length of the arm, thickness of the wrist, and the length of the shirt.

Q. Did you make all these measurements on Mr. Bailey when you undertook to alter his shirts?

(Objected to.)

A. I did.

Q. Will you please to state, as well as you can recollect, what day Mrs. Bailey came to your house and cursed, as you have stated?

A. It was on the 23d of August, a day or two after the furniture was bought, I should judge. The furniture was then packed up in my parlor, just as it was brought from the auction-room.

Q. Did you then offer to pay her the money you had borrowed?

(Objected to because testified to in the cross-examination.)

249 A. I did not offer to pay it to her until I brought it to her on the 30th. I promised to pay it to her as soon as my husband received his pay, as we didn't keep money on hand.

Q. What had you said that led her to call you a damned liar?

A. I told her that she ordered me to buy the furniture, or I shouldn't have bought it, previous to this. I could prove it by my husband, because he was with me when she ordered me to buy the furniture, and never had countermanded the order.

Q. Did you not then insist that she should take the furniture, and you retain the money you had borrowed?

A. I did not.

Q. What else did she refer to when she said it was a damned lie?

A. The furniture was all, I think, that was spoken of, except the house that was engaged for her; but it was about the furniture she said it was a damned lie.

Q. Is not Mrs. Bailey a member of the Presbyterian Church?

250 A. I do not know.

SARAH J. F. SEYMOUR.

Sworn to and subscribed before me this 15th day of October, A. D. 1868.

M. ASHFORD, *Examiner.*

Exhibit L. B., No. 1.

380 E STREET NORTH, WASHINGTON, D. C.,
August 30th, 1867.

Received from Mrs. D. Seymour the sum of fifteen dollars, being amount borrowed of me on August 24, last.

MRS. LIZZIE BAILEY.

251 *Deposition of George H. Thurston for complainant.*

And thereupon the complainant produced as a witness one George H. Thurston, a witness of lawful age, who, being duly sworn, deposes and says:

I am engaged at present as a clerk in the Third Auditor's Office.

Q. How long have you been so engaged?

A. Ever since the middle of January, 1863.

Q. During the time that you have been so engaged, was A. W. Bailey a clerk in the same office? And, if so, state how long, to the best of your knowledge.

A. He was a clerk, my impression is, since May, 1866, to April, 1867.

Q. Did he occupy the same room with you?

A. He did.

Q. Did you know him?

A. Yes, sir.

Q. Please state his appearance as regards health.

252 A. He appeared to be a man of very feeble condition.
Q. At what period of this time did he so appear?
A. All the time.
Q. Describe his appearance.
A. He was thin, pale, and quite haggard at times.
Q. What was the apparent size of his chest?
A. It would be a mere matter of guess-work on my part.
Q. Contrasted with your own, how was it?
A. I consider myself nearly as stout around the chest as he was.
Q. Did you ever observe Mr. Bailey cough?
A. I never heard him cough.
Q. Did you ever see him expectorate?
A. I have.
Q. Did you ever observe the character of that expectoration?
A. I have not.
Q. Please state whether or not his expectoration ever emitted any odor?
253 (Objected to, because he said he never observed the character of it.)
A. Not to my knowledge.
Q. What part of the room did you occupy?
A. As head of the room, and in charge of the room.
Q. What was Bailey's position?
A. A clerk, in the section of the room almost farthest from me.
(The witness explains thus: When Bailey first came to the office, my impression is that for the first few days he was in my section. The section was divided, and he went into another section in the same room, in charge of another party. I am in doubt when the section was divided—whether while he was with me or afterwards.)
Q. You say you were in charge of the section in which Bailey was. Whilst in charge, did any of the clerks in his section make complaint about Bailey's expectoration?
(Objected to, because witness has not said he was in charge; and, second, it was mere *heresay*.)
254 (Question withdrawn.)
Q. During the period of Bailey's clerkship, were you ever in charge of the section in which he was employed?
A. About that I am in doubt.
Q. Did the clerks in that section, to your knowledge, ever make complaint about Bailey's expectoration?
(Objected to as mere *heresay*.)
A. No, sir; not to my knowledge.
Q. At what period of this time did you hear Bailey cough and see him expectorate?
A. During the last six months of his stay in the office.

Cross-examination:

Q. Did Bailey chew tobacco or smoke, either?
A. I have no knowledge.
Q. Are you in good health with an ordinary-sized chest?
A. I am presumed to be.
255 Q. Did any one come to see you about this case before you were summoned; and, if so, who?
A. I have no knowledge only on their own representation; that is, those who came.
Q. Who did they represent themselves to be?

A. One represented himself as general agent of the company; one as being president of the company; two representing themselves as attorneys of the company; one a clerk of the company.

GEO. H. THURSTON.

Sworn to and subscribed before me this 15th day of October, A. D. 1868.

M. ASHFORD, *Examiner.*

Adjourned until to-morrow, Friday, October 16, at ten o'clock a. m.

M. ASHFORD, *Examiner.*

256 *Deposition of De Witt C. Lawrence for complainant.*

FRIDAY, *October* 16, 1868—10 *o'clock a. m.*

Met pursuant to adjournment, when the complainants produced as a witness DeWit C. Lawrence, a witness of lawful age, who, being duly sworn, deposes and says:

Q. Where are you employed?

A. In the U. S. Patent Office.

Q. Did you know Albert W. Bailey?

A. I did.

Q. When did you know him?

A. I have known him since 1866, and up to his death.

Q. Did you see him frequently, and how frequently?

A. I did; from three days to two weeks or a month at a time, at intervals.

Q. Please describe his appearance as regards his health?

A. He was a consumptive-looking man, and at the latter part
257 of his life—that is, two or three months before he died—he was much debilitated.

Q. Did you ever hear him cough?

A. I have.

Q. Please describe his cough as well as you can?

A. It was a hollow cough, similar to a consumptive person.

Q. About what time did you first hear him cough?

A. About five months before his decease.

Q. Did you know of his habits as regards temperance or intemperance?

A. He was a very intemperate man; he always imbibed a certain quantity, but never was thoroughly intoxicated so as he couldn't walk home.

Q. You say, in answer to the last question, "that he always imbibed a certain quantity;" of what do you mean?

A. I can't state that definitely; it might have been ale, beer, or whiskey; he had the appearance of a man very much accustomed to drink.

258 Q. Did you ever drink with him?

A. I did not.

Q. Have you ever seen him drink?

A. I have.

Q. Now, please state at what period of your acquaintance with him you first observed his drinking habits.

A. It was about two years and a half ago; he did not drink as much then as he did in the latter part of his life. I have seen him drink

since—about three months before his decease; I am under the impression that the physician prescribed whiskey for him at that time.

Q. Has Bailey ever been at your father's house?

A. Often.

Q. Is your father dead?

A. He is; he died June 27, 1867; disease, diabetes.

Q. Did Mr. Bailey come to your house during your father's last sickness?

A. He did; several times.

259 Q. Did you ever, during your father's last sickness, and whilst Mr. Bailey was visiting your house, hear Mr. Bailey and your father speak about their mutual health? And, if so, state what was said.

A. I remember the circumstance very well in relation to health; my father informed Mr. Bailey, in the conversation, that he thought his chance of living was much better than his, (Bailey's.) Bailey replied smilingly, that it might be so, but he thought he would hold out the longest, which eventually proved to be as he prognosticated, although but a short period.

Q. Do you remember when this conversation took place?

A. I do, distinctly; it occurred in the back parlor of house 426 Carroll Place, Capitol Hill, in the latter part of May, 1867.

Q. At this time, what was Mr. Bailey's condition as to health?

A. He was then on the decline, gradually sinking, as consumptives do.

260 Q. Did he state at the time that he was in consumption?

A. I never asked.

Q. Did you ever hear Mr. Bailey mention to your father, or to any one else, about his getting or having his life insured?

A. I did; he spoke with my father previous to his life insurance, and said that he expected to insure in some company for $5,000 or $10,000. My father replied, "that any company that would insure Mr. Bailey would insure a dead man."

Q. What did Mr. Bailey say in reply?

A. He laughed at the idea.

Q. Do you remember at what time you heard this conversation between Mr. Bailey and your father; and, if so, when? I mean the conversation about life insurance.

A. It was in January or February, 1867.

Q. What were the relations of Bailey with your father?

A. Very friendly and agreeable.

Q. To see whom did Mr. Bailey come to your house?

261 A. The family; but my father principally.

Cross-examination:

Q. How long did your father's last illness continue?

A. Between five and six months.

Q. Was he confined to the house during all that time?

A. He was not; he was about, out of bed, until the day before his decease.

Q. How long was he confined to the house?

A. He was on the premises about all the time, except after he went to New York for the purpose of recruiting his health, but he died about three weeks afterwards—that is, after he went to New York; he died there.

Q. Do you recollect what time he left for New York?

A. In the early part of June, 1867.

Q. Had he been confined to the house prior to that time? And
262 if so, how long, and at what intervals?

A. About two months, but not in bed.

Q. Was he confined to the house in the month of January or February, 1867.

A. He was in February.

Q. When did the conversation between Mr. Bailey and your father, in which your father said "he thought his chance for living was as good as Bailey's," occur?

(Objected to because already answered.)

A. Upon Sunday, the latter part of April or in May; it was in the spring-time.

Q. When did the conversation in regard to life insurance between them occur?

(Objected to for same reason.)

A. About 4 or 5 months before Bailey's decease.

Q. Can you not fix the dates of these conversations, respectively, with more precision?

A. I cannot, definitely.

Q. In either of these conversations, was anything said by Mr. Bailey or your father, or any one else, about Bailey's being attended by Dr. Young?

263 A. I never heard Dr. Young mentioned; that is, till this case was brought up.

Q. Was anything said in either of these conversations about Mr. Bailey's being or having been under medical treatment?

A. No.

Q. Was anything said at any of those conversations about the remedies Bailey was then employing?

A. No.

Q. How did the remark made by your father to Bailey about his chance of living occur; that is, what preceded it?

A. A general conversation about various subjects of no consequence in this case. They were joking about their healths. My father, in a smiling manner, addressed Mr. Bailey in relation to his health, and said that he believed his chance for living was the best.

Q. You say the conversation about Mr. Bailey getting a life insurance occurred 4 to 5 months before Mr. Bailey's decease. Was your father at that time confined to the house?

264 A. He was.

Q. How did that conversation arise, and what else was said by either of them on that subject?

A. I simply overheard the conversation. I only remember the remark that Bailey said he had, or intended to have, his life insured for the amounts specified heretofore.

Q. Who else was present at that conversation?

A. No one but myself.

Q. Was this also a jocular conversation or not?

A. They were smiling as they made the remark. I presume it was partly a practical joke.

Q. Was this before or after Mr. Bailey was removed from office?

A. I can't state that definitely, as he was removed three or four times.

Q. From the intimacy existing between Bailey and your father,

265 and the frequency of his visits, had you not good opportunities to know when Bailey was in and when he was out of office?

A. I had not, as he was out of office on sick leaves for days, and sometimes weeks, with his pay continued.

Q. Had you not equal opportunities to know when he was removed as you had to know he was on sick leave, with his pay continued?

A. I think not—I won't say positively—he was removed some time in February.

Q. Was he restored to office after that?

A. Well, I'll say "no;" that is, as far as my knowledge will extend.

Q. You say he was removed three or four times. When did these removals occur, as well as you recollect, respectively?

A. I have heard Mr. Bailey remark that he had been employed in three or four different capacities under Government since he was discharged from the Army.

266 Q. When did you first become acquainted with Mr. Bailey, and where?

A. In the latter part of 1865. He was then residing on I street, in a boarding-house kept by Mrs. Von Komecher.

Q. What office was he in, so far as you know, during the whole time you knew him?

A. In the Treasury Department, so far as I know. I have never been there.

Q. So far as you know, was he ever removed from the Treasury but once?

A. I think he was removed, and afterwards reinstated.

Q. Do you recollect when that removal took place?

A. It occurred in the winter '66 or '67. The month I do not recollect.

Q. Can you now state whether, at either of the interviews between Mr. Bailey and your father, testified by you, Mr. Bailey was in office?

A. I cannot.

Q. Did both of these interviews occur during you father's last sickness?

267 A. I presume they did.

Q. Were they near together, or at long intervals?

A. I should judge they were at the same time; made at the same conversation.

Q. Had Mr. Bailey a cough, and was his appearance that of an unhealthy man when you first became acquainted with him? and, if not, state, as well as you can recollect, where you first observed these things.

A. He always appeared to me as an unhealthy man; but at first he had no cough. About four or five months before his decease I first observed his cough.

Q. Did you ever know Mr. Bailey to be attended by a physician; and, if so, when?

A. I have heard it stated that Dr. Crouse attended him in the latter part of his sickness, and only him.

Q. Did you visit Mr. Bailey in his last sickness?

A. Only once, a week before he died.

Re-examined:

268 Q. Do you remember when he died?

A. He died in the latter part of July, 1867; the date I don't remember.

Q. What did Mrs. Bailey say to you yesterday afternoon about your giving testimony in this case?

(Objected to.)

A. Nothing.

Q. Did she not say that she would be satisfied, and would not have any ill-feelings against you if you made your testimony as brief as possible?

(Objected to.)

A. She never intimated any such thing in any manner, shape, or way possible.

Q. Upon your first coming into this office, did you not address Mrs. Bailey, and did she not refuse to notice the recognition?

(Objected to.)

A. I addressed everybody in the room. I didn't observe whether she returned the salutation or not.

Q. Please state whether Mrs. Bailey has or not spoken to you this morning whilst you were giving testimony in this case?

269 (Objected to.)

Q. She did; but I did not hear or understand what she said. I was engaged in giving my testimony.

D. C. LAWRENCE.

Sworn and subscribed to before me this 16th day of October, A. D. 1868.

M. ASHFORD, *Examiner.*

Adjourned until the day of A. D. 1868.

M. ASHFORD, *Examiner.*

DISTRICT OF COLUMBIA, *ss:*

I, Mahlon Ashford, examiner in chancery, do hereby certify that in pursuance of due notice, the foregoing depositions were taken down, and by me reduced to writing in the presence of, and from the statement of, the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence & of the solicitors of the cause, who

269½ were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

M. ASHFORD, *Examiner.*

270 *Testimony for defendant.*

In the supreme court of the District of Columbia.

PHŒNIX INSURANCE COMPANY *vs.* ELIZABETH A. BAILEY. } No. 1188, equity.

Deposition of Dr. John L. Crouse for defendant.

Dr. John L. Crouse, a witness on the part of the defendant, and being duly sworn, deposes and says:

I am thirty-five years of age, and reside No. 70 East Capitol , in

the city of Washington, and am by profession a practicing physician. I graduated in 1859 at the Maryland University. I have practised in this city upwards of three years. I knew the late Albert W. Bailey. I paid
him a professional visit in the month of August, 1867, on or
271 about the 17th. He then lived on 5th street east, between East
Capitol and North A streets. I found him suffering with a bronchial affection, as I thought, and called it capillary bronchitas laryngitis, and prescribed accordingly. I saw him on the following day, and found his symptoms better. I then asked him to give me his previous history, and he informed me that he had caught cold going from the theatre in a rain to get an umbrella to bring his lady home. He was taken with a chill and a fever and a cough. He applied to a physician for that trouble, and he prescribed for him, and he grew better. After that he had a slight cough, but felt tolerably well. He then removed where I have stated, and called my attention, and now my services began. I cannot remember when it was he told me he caught cold; it was not months, but I think it was some
weeks. As I said, on my second visit I found him better, and
272 told Mrs. Bailey, his wife, so, who followed me out of the house.
I told her his case was what I have already stated, and that I could get him out in a little while, I thought, and did not consider him in immediate danger. I prescribed the ordinary means for bronchitis, and continued to attend him, with apparent improvement, for several weeks, when I discovered a change for the worse, and so informed his wife, when she seemed to be visibly moved, and took it very hard, and asked me in reference to consultation with another physician, if, in my judgment, I thought best. I told her that it would be entirely agreeable and pleasant; but, frankly, I was doing all that I thought could be done in his case, and more particularly defined his recent symptoms, in that the bronchial inflammation had invaded the parenchyma of the lungs, and that I feared the result will not be favorable. She then asked me
if I thought so when first called in. I asked her if I had not
273 stated in the beginning that my hopes were better, and that I
would have him out, I thought, in perhaps a week; and be able to take a ride with me in my chaise, as I promised him; and that I was always sacred in my professional opinions, and certainly was sure that he was not so seriously ill on my first visiting him; and that it is not uncommon for bronchial troubles and laryngeal affections to migrate to the lungs, and produce the most serious results in a very brief time. I used this phrase to her: "That in the midst of life we are in death."

I continued to attend him until his death; he died about two or three weeks subsequent to the conversation with his wife. I attended him altogether about five or six weeks, but my books will show the length of time. I called once a day to see him until the third week, when he grew worse, and I then visited him twice and sometimes thrice a day. I
am satisfied that he was not affected with tubercular consump-
274 tion when I went to see him, and am confident that his case was,
as already stated, bronchial inflammation invading the lungs.

The difference between bronchitis and tuberculosis is that the former is an inflammatory affection of the mucuous membrane of the air-passages leading to the lungs, and the latter is a deposition of peculiar poison of the blood, taking its origin from a hereditary or scrofulous diathesis, and can lie dormant in the system—either the lungs or other vital organs of the human economy—for forty years, more or less, without producing any serious results.

Bronchitis can properly be styled the galloping consumption, and usually runs into inflammation and disintegration of the lungs; the

course of bronchitis in invading the lungs is usually very rapid. When I was called in I made a careful diagnosis of his case, as I do in all my cases. I did not discover any of the symptoms of tubercular
275 consumption. The cold producing bronchitis need not have been of any particular duration. It may have been two weeks or two months. He did not spit blood during his sickness that I discovered. I saw the sputa during my visits there, and saw no blood. I also enquired of him, and he said he did not spit blood. Had tubercules in the lungs been ascertained to exist four months before I was called in, and had their presence at that time been ascertained by sounding and asculation, or by the stethoscope, it is impossible that their presence should not have been discovered by me.

Adjourned till to-morrow morning, September 15, 1868, at my office.
JOHN J. JOHNSON, *Examiner.*

Met pursuant to adjournment, and adjourned till to-morrow, (Wednesday,) the 16th instant, at 11 o'clock, at the same place.
JOHN J. JOHNSON, *Examiner.*

276 Met pursuant to adjournment, and the examination-in-chief of Dr. Crouse was resumed by Mr. Davidge, solicitor for defendant, who further deposes and says as follows:

Mr. Bailey showed me his leg on my first visit, and I examined it and found it a healthy stump, with no disease whatever. It continued in that condition until his death. When I visited him I left my orders, as I do in all cases, referring to care and nursing, and all my orders were strictly conformed to. I directed her to give him anything which he wished to have except indigestibles, which are not given to any one sick. All my directions were followed strictly by her; this is to my personal knowledge, for the reason, on my succeeding visits, I invariably found plenty of the delicacies and nourishments of the sick-room. The table invariably contained abundantly more than he made use of; this
277 I saw myself. I prescribed chicken and mutton broth, and in fact all the delicacies which a sick person might relish. I saw a refuse of all these articles on the table; that is, more than he would eat. He had plenty of roast apple, soft-boiled eggs, chicken, &c. I never saw a sick husband more tenderly cared for, and on more than one occasion Mr. Bailey spoke of the particular kindness of his wife toward him.

Cross-examined by John D. McPherson for complainant:

The first time I ever saw Mr. Bailey, to know him, was when I was called in to visit him. When I was called to visit him, I found him on East Capitol and North A streets, in bed. He was suffering from bronchial and laryngeal affections. He was somewhat emaciated, and looked the suffering of cough. His cough was frequent. He had a pretty
278 hard cough, and quite free expectoration. I made an examination of the lungs, and the disease extended as far as the bronchial tubes; it extended to both lungs, but more in the one than the other; I don't recollect which, because I didn't expect to testify. I prescribed expectorants and tonics. He complained of fever, and constipation, and soreness of throat. I gave him for constipation a gentle cathartic, and the expectorant consisted of compound syrup of actae, syrup of squills, syrup of almonds, extract of calasaya, and, I think, morphia. I am not sure unless I refer to my recipe. The other expectorants I am sure. I also directed him to use the best of whiskey in

milk punch. He said to me whiskey was objectionable, as he had a distaste for it. I told him to use it in milk punch, as I did not think it would produce that effect. He grew better after this prescription, and was able to get up and be about in the house. I continued this
279 treatment with slight alterations, of little or no consequence, however, in the case, as I conceded it to be one of those cases not unfrequently met with by the practitioner, arising from a cold affecting the bronchii, and had invaded the lungs with rapid progress and ultimate death, and my treatment was principally the same, excepting towards the end of his sickness, when I relaxed the expectorant, and relied more particularly on the tonic, looking on his case, in the last of his illness, as hopeless. He was as I said before; he grew better, and was about the house the second week. He also went to the circus about the third week, and about the fourth week he relapsed, and then it was my visits became more frequent, and I found that the tissue of the lungs were invaded, and the character of the cough and expectorants had changed, and gave evidences of serious trouble. Toward the end
280 of his sickness—I think the last week of his sickness—he had the night-sweats. My experience in cases of this kind is not limited, and I never saw a case more rapid in its results. The fever he had when I was first called in subsided when the bronchitis yielded, and disappeared altogether when he was going about the house, and returned when the relapse took place. I think I have given all the manifest of his case. He died of what may be styled the galloping consumption. The disease of which he died was bronchitis gradually invading the tissue of the lungs. The disease of which he died was acute phthisis pulmonalis, the consequence of bronchitis. I know it was the result of bronchitis, because he had bronchitis when I was called in, and I followed that in its migration of the lungs; the disease was not tuberculous at any time. There was disintegration of the tissue of the lungs, the result of bronchitis. There is a chronic bronchitis, *there is a*
281 *chronic bronchitis*, and acute bronchitis. This was acute bronchitis.

Q. Is there a disease known as the secondary bronchitis?

A. I recognize no such term as secondary bronchitis.

Q. Is not bronchitis sometimes the result of pulmonary tuburculous disease?

A. Acute bronchitis is nearer the result of tuburculous; all the authorities will bear me out in that.

Q. In this, was there any consolidation of the lungs?

A. In the end of his illness, or about the last week, resulting from inflammation, there was a deposit of expectorant matter in the lungs. Before the last week there was no consolidation.

Q. What was the nature of that deposit?

A. It was expectorant matter, such as we find in the fatal winding-up of bronchial and pulmonary diseases.

282 Q. What is the technical name of that deposit?

A. Sputa.

Q. Does that describe the character of the deposit?

A. Yes; all that is needed. I can define it for you: The character of this particular deposit was *mucou*, or matured matter, always existing and expectorated in the end of bronchitis and consumption.

Q. What was the color and physical character of the expectoration?

A. A white and pale yellow, with the consistency of soft jelly, or rather thin jelly.

Q. Was it the presence of this in the lungs that caused the consolidation?

A. Yes, sir; and this was the result of the bronchial *inflamation;* the *consoldation* was in the upper portion of both lungs.

Q. About how large a portion of the lungs was thus consolidated?

A. Well, sir, it would be impossible to tell.

283 Q. Were any of the following symptoms manifest during the progress of the case: palor, anxiety of countenance, headache, hurried and *laborous* breathings, sputa specked with blood?

A. Well, sir, that is all in a nutshell. On my first visit he had not palor, but flushed countenance, and the usual evidences of bronchial *inflamation;* the palor appeared in the end of the case. The last week of the relapse, when the lung had been invaded, he had, at different stages of the case, and had not, at different stages of the case, anxiety of countenance. I don't remember, but think he did complain of the headache at some stage of the case. At different stages of his case, also, he had hurried and *laborous* breathings. There was no blooded sputa at any stage of his case. There were different symptoms as the *inflamation* arose and subsided. The paper here shown me is the certificate I gave to the undertaker as the cause of the death. (The said paper is hereunto annexed, and marked Exhibit J. L. C., No. 1.) Phthisis

284 pulmonalis was the cause of his death, but that was the result of bronchitis, as I have above stated.

(NOTE.—This deposition has not as yet been signed.)

Adjourned till to-morrow, Thursday, 17th instant, at the same place.

JOHN J. JOHNSON, *Examiner.*

Deposition of Dr. Johnson Eliot for defendant.

Met pursuant to adjournment, when Dr. Johnson Eliot, a witness produced on the part of the defendant, and being duly sworn, deposes and says as follows:

My name is Johnson Eliot. I am 52 years of age. I reside in the city of Washington, and have from my birth. I am a physician by profession, and have been practicing since 1844. I am one of the medical examiners of the complainant. I commenced examining as soon as

285 the agency of the complainant was opened in Washington, several years ago. I am still acting as medical examiner for the company. I examined a man on the 7th of September. The paper now shown me, marked H. A. B., No. 1, purporting to be signed by me on the second side twice, was in fact signed by me; all the manuscript is in my handwriting, under the following heads: "Questions, each of which is to be answered by the medical examiner of the company;" and "Questions to be answered by the physician of the party to be insured."

I knew the late Albert W. Bailey. I examined him on or about the 10th of June, 1867, after he made application to the complainant to be insured. I first called at the house of Mrs. Bailey in company with Mr. Brewester, the agent of the complainant. Mr. Bailey was not in; we waited, it may be, fifteen or twenty minutes. Mr. Brewester then dispatched a messenger for Mr. Bailey, but I cannot recollect whether Mr. Bailey returned to the house, and the examination was made there,

286 or whether I subsequently made it at my office; I am positive I made the examination. His appearance was that of a healthy-looking man. I saw no reason to reject Mr. Bailey from his appearance. He had lost a leg. I didn't examine the stump; the usual examination was made which the insurance agents require, and the usual questions asked. I examined his lungs. I cannot say whether I took his coat off, but his

vest was unbuttoned. The chest was examined by measurement, the capacity of the lungs by forced inspiration and expiration, by ascultation and percussion; that is, by tapping the chest. I deemed him a sound man, and passed him. I have examined from six to ten hundred applicants for that company. I am not aware that any applicant passed by me for the company ever died from the phthisis. I subsequently, upon Mr. Bailey's application for a second policy, he waited upon
287 me at my office, and I made another examination. I recollect now that, if there was any change in his appearance, he looked better than he did by the first examination, and his appearance was that of a healthy man. I subjected him substantially to the same examination as before, and I reached the same conclusion. I did not fill up a blank certificate, as on the first occasion, but gave a paper, in substance as follows: "I have this day examined Albert W. Bailey, and find his condition good, and recommend an increase of insurance on his life." That was the substance of the certificate. I never saw him afterwards. We detect tuberculosis generally by examination of the chest, by ascultation and percussion, and the contour of the chest. I am not in the habit of using the stethescope. I have more confidence in immediate auscultation. The presence of tubercles in the lungs is indicated by a dull, flat sound. A slow, smooth murmur in the lungs indicates health. In
288 the early stage of the pneumonia, there is a crepitant roll. The roll is caused by fluid in the cells, and air passing through. This roll you may detect in catarrh, and in other diseases. The presence is not indicated by any peculiar roll or murmur, but by the want of resonance.

Cross-examined by Jno. D. McPherson for complainant:

I never saw Bailey but the two occasions. I would here remark that I have signed the certificate as the physician of the party insured; in explanation I would say it has been the uniform practice of Mr. Brewster to insert the name of an examining physician of the company in lieu of that of the family physician, or one whom the party has usually employed or consulted; the present is not an exceptional case; in all the examinations I have made, except perhaps a very few, my name has been entered in lieu of the physician of the party; I do not remember the particulars of my examination further than I have stated; I know I measured his chest.

289 Q. Did you ask the applicant any other questions other than those indicated in the certificate?

A. I do not remember other questions.

Q. Some of these answers are your own opinions, and some must have been derived from the applicant himself? Please indicate by the numbers those answered by the applicant.

A. In No. 2, the weight was got from the applicant; also the answers to Nos. 7 and 8 and 9. No. 10 I got partly from the applicant and partly from my examination; in getting the answer to No. 10, I question the applicant about his history and his habits. No. 12 I got from the applicant, and from his schedule, and the certificate from his friend. No. 13 must come from the applicant. No. 14 comes from the applicant, except the obvious fact of the loss of the leg. All the other answers are my own opinions. I refer to the numbers in the certificate of the
290 medical examiner of the company. Of the answers given in the certificate signed by the physician of the party, No. 2 was partly given by applicant and partly by my own examination; Nos. 3, 4, and 5, by the applicant; No. 6, partly by me and partly by the applicant; the others were the result of my own examination. These examinations

last but a few minutes; if we examine parties as rigidly as we do recruits, parties would not submit to it.

My recommendation that an applicant be insured is mainly the result of my own observation and judgment; I attach but little importance to the declarations of the party.

Q. If the applicant had informed you that his father had died of consumption at the age of thirty-five years, how would that have affected your action?

A. I would in all probability have hesitated and submitted the case to the company; that is, instead of answering "yes" to question
291 15, I would have written and submitted it to the company.

Q. If you had known him to be of grossly intemperate habits, how would that affected your action?

A. I should not have passed him, as I invariably reject them.

Q. If you had known him to have been pronounced by two physicians to have the consumption, how would that have affected your action?

(Objected to as irrelevant.)

A. I would have hesitated, and not have set my opinion against two other respectable medical men; it would have had a very important bearing upon the case; I might have believed differently, but still an opposing medical opinion might have its effect upon me; where there is proclivity to, or incipiency of, tuberculosis, the most skilful specialists necessarily in fault.

Q. Does resonance sometimes exist in a fatal stage of tuberculosis?
292 A. Where there is a cavern, resulting from the destruction of the lungs, resonance does exist.

Q. Is not a murmur in the chest produced by the passage of the blood through the vascular system or the passage of air in the cells?

Re-direct:

Q. If a man is so far gone with tuberculosis as to have expectorated tubercles from his lungs, is not the presence of the disease readily distinguished?

A. Yes; there may, however, be exceptional cases; tuberculosis is said to have been cured; I never knew of a case, but there are cases reported; I speak of pulmonary tubercolosis.

Q. Suppose a man to have pulmonary tuberculosis, and cavities to have been formed by the expectoration of the tubercles, to apply to
293 you for examination for insurance, what liklihood is there that you would fail to detect the presence of the disease?

A. I should certainly detect it; the resonance in that case is totally different from that of a healthy lung.

JOHNSON ELLIOT.

Deposition of Henry Pond for defendant.

Henry Pond, being duly sworn, deposes and says as follows:

My name is Henry Pond; I am forty-six years of age; I reside in this city, and am a grocery merchant; keep a store at the corner of E and Ninth streets, and have for three years. I knew Albert W. Bailey. I think I first knew him in the fall of 1866. He came to the store. My relations at that time were not very intimate. He came there with Mrs. Von Komecher, as surety for her. I did not know her, and, she
294 wishing a monthly account, Bailey went surety for her. After that I became intimate with him. He used to come to the store

after my acquaintance with him about three times a week. *After that I became intimate with him. He used to come to the store after my acquaintance with him about three times a week.* After the first three months he used to come quite often, every day, either in the morning or evening. He would sit and talk with my partner, Mr. Wright. I don't think I ever saw him under the influence of liquor. He never bought much liquor, although we had a heavy stock. I never saw him drink more than once or twice in the store. It was our habit to offer liquor to customers. When he came in the evening, he would sit down and talk with Mr. Wright half or three-quarters of an hour. His relations lasted in that way until he went to the Hill to live. His habits were good; his appearance for health was pretty good. I recollect that he had
295 a hard cough in the spring of 1867, before he died; he got over it; I did not hear him cough any more. I recollect his being insured. He showed me the policy. I don't think he had any cough at that time; he had got well. He got a pint of my best whiskey before he was insured, and he told me that it had done him a great deal of good. Apart from the loss of his limb, he was apparently a healthy man. He was not *a* very strong; the loss of the limb, I think, must [have] affected his general health.

Cross-examined, &c.:

I think he has refused liquor when offered to him. I recollect once he refused it, and said he belonged to the temperance society. It was not our habit to offer liquor to customers. I never went to Becker's restaurant, and I don't think Mr. Bailey went there. I never went to any restaurant of evenings. I don't think that Mr. Bailey was a drinking man. I don't believe he was, from the fact that we never sold
296 him more than two pints of liquor until after he was taken ill at Capitol Hill. Then his wife came and got some, and said the doctor had ordered it. He dealt habitually at our store. After he was discharged from the office, he was at our store some two or three times a day. He never told the reason why he was discharged.

HENRY POND.

Sworn to and subscribed before me this 22d day of September, 1868.
JOHN J. JOHNSON, *Examiner.*

Deposition of Bernard Tulley for defendant.

Bernard Tulley, a witness on the part of the defendant, being duly sworn, deposes and says as follows:

My name is Bernard Tulley; I am 41 years of age; I reside 159
297 Lee street, Baltimore, Maryland, and by occupation am an organ-builder. I knew the late Albert W. Bailey. I first made his acquaintance in November, 1865. I met him on E street, in the city of Washington, at the boarding-house of Mrs. Von Komecher, now Mrs. Bailey. I was introduced to him, and our relations became intimate. I boarded at the [house] until on or about the 1st of January, 1866. I frequently saw and conversed with Mr. Bailey. I saw him about three times a day; our evenings were frequently spent together at the boarding-house; we had repeatedly long conversations on different subjects; the condition of his health at that time, from appearances, was good; I saw nothing to attract my attention; he had no cough that I observed; I supposed his habits to be good; he frequently went to bed before I did; I never saw him under the influence of liquor, and there was no-

thing to indicate that he was at the time addicted to drink; I never formed any idea at all of the kind; he attended to his business
298 while I was there, so far as I knew. I am a temperance man myself, and never drank a glass in my life of either spirituous or malt liquors. When I left there in January, I always made four or five trips a year, according to the demands of my business, remaining a day or two, or three or four days. When I was in the city I always went to the house, and called to see the inmates; I kept up my relations with Mr. Bailey; I thought a great deal of him; when in town I would call at the house and see him; I never observed that his health or habits were changed from what they were on my first visit; I never noticed any cough; I did not see him in the spring of 1867, but did see him the week before his marriage, or the week after his marriage, which I will [not] be positive. I had been stopping at the house, and left him at that time—I mean the week after, or the week *after or the week* before his marriage; I recollect I promised to meet him in Baltimore, on his way to Philadelphia, on his *weeding* trip; during the two weeks I
299 stopped at the house I conversed with him repeatedly on various subjects at different times, my business hours excepted; in the evenings we would sit together in the dining-room and talk; I admired the man, as he was very intelligent, and I liked to seek such company; I thought and believed him to be a moral man, as his conversation was always directed in that way; his health at that time was very good; he appeared to me, during the two weeks, to be in good health; he certainly at that time had no cough; if he had had a cough, I must have observed it; he certainly had not an habitual cough; that I certainly must have observed; his habits of life appeared as formerly; I saw no change from what I had formerly seen. I recollect when I first met him at my last visit I enquired about his health, and he told me that he was then well, but had had a bad cold; I saw nothing to indicate that his recovery was not complete; his appearance was as healthy as when I first met him in the fall of 1865; I think he said that he had had
300 his life insured. I never saw him again after that visit; my business engagements did not allow me to meet him in Baltimore; I think I was out of town.

Cross-examined by John D. McPherson for complainant:

The greatest number of boarders that I saw at the table, besides the family, was four to six; I almost always took my breakfast and dinner alone; I left the house generally of morning at 7 o'clock, and took a lunch with me, and had supper at 6 o'clock; I had two meals at the house a day, and my dinner was reserved for me, and took both dinner and supper together; sometimes I took dinner at the regular hour; sometimes during the day I would drop in the house, if in the neighborhood; sometimes I had to return for my tools; I was working by the day for those that employed me to mend organs; I have no employers in Baltimore; I do business on my own account; Mr. Bailey was generally, I would say almost always, down before I left the house in the morning.

301 He was a clerk in the Treasury, I believe; he sometimes would go in and out in the evening while I was there; I would always see him in the evening; I don't mean to say I passed all the evenings in the house, nor that he did; I do mean to say that I saw him every evening; I never went out with him in the evening, to the best of my knowledge; I may have gone once in company with Mr. Bailey and Mrs. Von Komecher to the theatre; once he came out to the Schutzen

Feast, where we were, and we came home together; Mr. Bailey said he was going to get a glass of lager, but whether he did or not I don't know. He showed no signs of having been drinking when he came back; I never saw him drink in my life; of the four or five trips I made to Washington, I think there was one I did not stay all night, and perhaps two—of that I am not positive; I never knew of his being under medical treatment while I knew him; I never knew of Dr. Magruder's visiting him; in speaking of his life insurance, I don't know how it was brought about; he said it was a good institution, and that every man ought to have his life insured; I think he said some
302 one called to see him about it; I think I first heard of his death in January or February of this year; I heard of his death in Washington, and went to the house and found they had moved away. I went to the store where Mrs. Von Komecher used to deal, and was informed that he was dead, and where Mrs. Bailey was living, and I then called to see her; I do not remember that Mrs. Bailey told me the length of time of his illness, or of his complaint; she might have told me, but I don't remember.

B. TULLEY.

Sworn to and subscribed before me this 19th day of September, 1868.
JOHN J. JOHNSON, *Examiner.*

Deposition of Robert B. Wagner for defendant.

Robert B. Wagner, a witness on the part of the defendant, produced, and being duly sworn, deposes and says as follows:

My name is Robert B. Wagner; I am 34 years of age, and
303 reside in this city, and am clerk under the Government; I knew the late Albert W. Bailey; I first met him at Mrs. Von Komecher's some time about the 1st of July, 1866; I was a boarder at that house; I continued to board there for one month—during the month of July, 1866; I became intimate with Bailey; he was a boarder there at that time; I used to meet Bailey frequently afterwards; I went again to live with Mrs. Von Komecher on the 1st May, 1867, about two weeks temporarily, while I was getting ready to go to housekeeping; I again lived with her from about the 15th of September to the 1st of October, 1867; she was then Mrs. Bailey; she was then living on Capitol Hill; my relations with Bailey were intimate and friendly; I used to see him and converse with him in July, 1866, and May and September, in 1867; I used to meet him on the street; he used to come to my office; our relations in the interval, while I was not boarding at the house, were not to say intimate; I used to meet him on E street most every morning going to his office.

304 I never saw him drink, and I never saw him at any time I lived in the house with him under the influence of liquor; he belonged to the temperance society in 1866, and wanted me to go to the meeting; I saw him every day during my stay at the house in May, 1867; I never saw him at all under the influence of liquor; I went there on the 1st day of May, 1867, in the evening, to live, and took my wife with me; in May, 1867, he coughed some, but I never heard him complain; after I left the house, about a month or six weeks, he came to see me once at my office, and remained half an hour, and perhaps more, and I did not hear him cough; I asked him how he was, and he said he was very well; his habits were just the same; I saw no change in him; I never saw any signs of intoxication when I met him—sometimes oftener than

two or three times a week; in the winter of 1866 and 1867 I used to meet him almost every day; I saw him during my stay at his house in 1867, when he was sick, sometimes two or three times a day; I
305 would go into his room and talk with him perhaps an hour or more; to the best of my knowledge, he was treated kindly by his wife; I never saw her ill-treat him; so far as I know he was supplied with all the luxuries; I never heard him complain; in the month of September—getting on cool—he had a good fire constantly; I believe he was comfortable so far as I saw; in regard to diet, I heard him on several occasions express a wish for certain articles—chicken or other articles of diet; I know his wife got them, and often he would not eat them; I have known the physician to come there late in the evening and prescribe medicine, and his wife would go after it in person soon after the physician had gone; I staid with him on several occasions while she was gone after the medicine; as far as I know, the medicine was administered at the proper time; he had a table at his bedside, with medicine, gruel, teas, and soup; he was able to take his medicine himself the most part of the time, until towards the last, when he had an attendant that staid with him of nights; he had fruits and jellies, and things of that kind on his table; he had preserved fruits,
306 peaches, and prunes, and things of that kind; these were put on the table at his bedside; I use to see his wife sitting on the bed and supporting him with her arm; I never saw any want of affection on her part; he never complained to me of any unkindness on the part of his wife; during one of my conversations with him he stated to me that he had all he ever desired—that is, to have a wife that loved him; and that if it should be the will of God for him to die, that he was satisfied, he had a wife that loved him, and that he could die easy. His bedding was comfortable, so far as I could see.

Cross-examined by Mr. McPherson for complainant:

I never spent an evening out of the house with Mr. Bailey to any place of resort; while I boarded there I saw him at home frequently in the evenings, reading the papers; in the month of July, 1866, almost every night I heard him go to bed, and I never knew him to be after eleven o'clock going to bed; while I lived there I missed him two or three times a week after tea-time; I know that he did spend evenings at home without going out at all; to my best knowledge, he did not drink; I never drank with him; he never alluded to the subject of drinking to me; he was unwell some time in May, 1867; I don't know whether he had a physician or not; I know he was out again, and he came to see me; he appeared after that as he did before his sickness; in May,
307 1867, he was in bed a day or so; I frequently asked him how he felt; he said he was tolerably well; I could not consider him an invalid; he was up and walking around; he walked with a cane, on account of his leg; when I heard him cough during his sickness in May, I don't know whether he expectorated or not; he was not confined to his bed when I went to board there in September; he came up-stairs one afternoon to see me; I saw the stump of his leg twice, and it was healed up then; he never complained of the stump hurting him; I saw the stump two or three weeks previous to his death, and it was all healed up; I believe he was confined to his bed a few days before I left the house, which was on the 1st of October; I don't know whether Bailey left his office by resignation or dismissal; I am not aware that he lost much time from his office; in February, March, and April, of 1867, I met him frequently going to his office while I was going to my office;

he told me he was going to his office; I don't know anything about his regularity to his office; I can only tell about the month I lived in the house with him.

Q. Have you any reason to suppose that he was more regular in his attendance during those three months than at any other month?

A. I have no reason to suppose it.

ROBERT B. WAGNER.

Sworn to and subscribed before me this 22d day of September, 1868.
JOHN J. JOHNSON, *Examiner.*

308 *Deposition of George G. Markham for defendant.*

George G. Markham, a witness on the part of the defendant, being duly sworn, deposes and says as follows:

I reside in this city, and am pastor of the Waugh M. E. Church; I knew Mr. Bailey; I don't know what his Christian name was; I met the defendant as his wife; I can hardly remember how long I knew him; it was but a few days before his death; I received a note from his wife to call and see him; Dr. Crouse also requested me to go and see him; there was nothing unusual either way, as struck my mind, as to his attendance and care; everything was ordinary, as in a sick-room; I was there two or three times, on different days—maybe more—and on the day of his death.

309 Cross-examined by Mr. Appleby:

I did not notice anything out of the ordinary course as to his comforts; I did not observe particularly; I did not take care to see that he was well provided for; I made no inquiries, taking it for granted, as I always do, where people are not in extreme poverty, that they are provided for; if there was unusual attention, or a lack of attention, I should notice it; my attention is usually directed to their spiritual welfare, rather than their physical.

GEORGE G. MARKHAM.

Sworn to and subscribed before me this 19th day of October, 1868.
JOHN J. JOHNSON, *Examiner.*

Deposition of Jared S. Wright for defendant.

310 Jared S. Wright, a witness on the part of the defendant, and being duly sworn, deposes and says as follows:

My name is Jared S. Wright; I reside in Washington, and have lived here about four years, lacking three or four months; I was living in Washington during the years 1865, 1866, and 1867—the latter part of 1865, and then down to 1867; I was engaged in the grocery business, at corner of Ninth and E streets, under the firm of Pond & Wright; I knew Albert W. Bailey; I became acquainted with him early in 1866, and I knew him from that time up to his death; he was a clerk in one of the Departments, and lived one door from the corner of Tenth and E streets; he removed from there to Capitol Hill; he was not married when I first became acquainted with him, but married afterwards; he married the defendant in this suit, Mrs. Elizabeth Bailey; during the time he held his position in the Department I saw him quite fre-
311 quently, sometimes two or three times a week; it was usually after office hours I would see him; he was generally at my store;

he frequently came in and sat for fifteen or twenty minutes, and sometimes half an hour, and sometimes longer, and talk; his habit of coming in the store continued up to the time he moved to Capitol Hill; he was frequently there after he moved to Capitol Hill; he would frequently call in the morning, and sometimes he would sit down, and sometimes he would not; he would also come in the store in the evening; he came in and got his tobacco and cigars. During all that time I never saw him in the slightest degree intoxicated; I can't call to mind now that I ever saw him drink a glass of liquor; he may have done so; I think in two or three instances he purchased a pint of whiskey at a time; he had opportunities to drink at my store if he had wished during that time. I
312 did not observe that he had any cough; his general appearance as to health before he left E street was as good as the average of people; I visited him after he left E street and went upon Capitol Hill; I was at his house during his last sickness; I should think, so far as my observation went, that he had all the comforts that could be desired, and all the attention that could be shown him was done by his wife. I carried jellies to him while he was sick.

Cross-examined by Mr. Appleby:

My observations as to Mr. Bailey's habits were not confined entirely to the time he visited my store; I frequently visited his house. I first knew him early in 1866, and I first visited him about six months after that, when he was on E street. My visits were not specially to see him, but simply calling on him as an acquaintance of the family. My
313 visits there were usually during the day. My visits were usually in the morning and evening. I lived in the neighborhood. He was usually at home when I went past. I usually went to my dinner about four or five o'clock, and he was at home. I don't know that I ever was at the house in the night-time. I have known Mr. Bailey to be confined to his house for a day or two, and no more, before he removed to Capitol Hill; I can't say with [what] complaint; I suppose with a cold or some slight complaint. I did not keep a restaurant, together with my store, during Mr. Bailey's lifetime; that is, I did not keep a drinking-saloon; I kept an eating-house. The habit of Mr. Bailey's coming to my store commenced, I think, in the spring of 1866, perhaps earlier. He continued coming there until his last illness, so that he could not come out. Mr. Bailey, as a customer, had op-
314 portunities to buy liquors at my store to take with him home. He could not buy any liquors to drink there, only by measurement. It is not my custom to sell liquors *to sell liquors* to be drunk at the store. I don't recollect whether I ever asked him to drink at the store. I don't know that he was ever asked at the store to drink. The jellies that I carried him on Capitol Hill were a present, and not bought by Mrs. Bailey. I have not had a great deal of experience in attendance on the sick. I did specially observe to see whether he had comforts. I observed that he had such things as jellies, and such things as were good for the sick. All of the jellies were not furnished by me.

Re-direct:

Mr. Bailey never invited me to drink at his house. I never saw any liquor there except in his last sickness.

JOHN S. WRIGHT.

Sworn and subscribed to before me this 12th day of October, 1868.
J. J. JOHNSON, *Examiner.*

315 *Deposition of Elizabeth Wagner for defendant.*

Elizabeth Wagner, being duly sworn, deposes and says as follows:

My name is Elizabeth Wagner. I am the wife of Robert B. Wagner, and reside in this city. I am 23 years of age. I knew the late Albert W. Bailey. I first met him to know him at Mrs. Von Komecher's, early in May, 1867. My husband and myself boarded at that house, and Mr. Bailey was also a boarder there. I think we left there some time in May, and went to housekeeping. In September, 1867, we went there in the same house to live. We had rooms in the second story, and they had the ground floor; this was on Capitol Hill. In May, 1867, when I lived at Mrs. Von Komecher's, I met Mr. Bailey dailey, and most always met him at the same table, at his meals. I used to converse with him. I met him in the evenings in the drawing-room or in the dining-
316 room. I never saw him at all under the influence of liquor. His appearance was that of a healthy man, as I thought. I never heard him cough. Whilst I was living there in May, he would come and go like any other man. I saw him at meals, and never noticed anything unusual about him. I lived in the same house in the fall of 1867, about a month and three days. He was sick at that time. He was not confined to his bed. He moved about, but was confined to his room, and would lay down two or three times in the day. I never saw him in bed until after I left there. When I say he was confined to his room I mean to say that he generally was confined to his room, but he used to go out and leave the house, and go down into the city. Whilst I lived at the house on Capitol Hill, being alone, my husband was a clerk, and during his absence I spent most of my time in their company. They had the parlor, chamber, and kitchen on the first floor. I would
317 sit there sometimes a half day, and sometimes three or four hours, and sometimes one hour. Whenever Mrs. Bailey went out, she used to ask me to come down and stay with him. She never left him alone. I would go and talk or read to him. No day ever passed, during my stay at the house, that a portion of it was not spent in their company. These were the opportunities I had for knowing their relations. The relations between them were loving and affectionate. He spoke of his wife as a fond husband would speak of his wife, and it made him feel bad that he had to leave her. I never knew of any interruption in their relations. After I left the house I continued to visit Mr. and Mrs. Bailey. There might have been a few mornings when, owing to rain or some other cause, I could not go. Sometimes when I called I would stay an hour, two hours, or three hours, or half a day, just as I could spare the time. Their relations were just the same as I have said above. Some time after I left the house he was confined
318 to his bed. He would sometimes set up in a chair or in bed. I continued my visits until his death, and was there the day he died. Anything that he would ask his wife got for him. I have known him to ask for things, and his wife would go out and get them. I knew her to do this on two or three different occasions. He always had everything he wanted. I knew her one day to go out on three occasions and purchase, and afterwards prepare breakfast—oysters and tomatoes—for which he had expressed a wish; when prepared he wouldn't take them. Throughout his sickness he had all kinds of fruits—peaches, pears, apples—gruel, pigeons, chickens, and soups. There was no sort of nourishment that he wanted, or that was thought it would do him good, but what he had. He had tea and oysters, soup and wine. I never saw a sick man better provided with all necessaries and luxuries. Nor

319 did I ever know a more loving wife. He has told me so himself. He slept in a very nice bed, better than the one I have, supplied with suitable sheeting and clothing. The sheets and bed-clothing were kept clean, and he used to have a clean shirt done up and put on every day. He laid upon a mattrass, with pillows for his head. After he was confined to his bed, Mrs. Bailey went out and bought five pillows, and wanted to put them under him, but he objected. They were afterwards put under him. He never complained of being uncomfortable. He told me several times that he had everything he wanted in this world. I saw the stump of his leg almost every day. It looked well. The skin had grown over it. When he was well he used to wear his artificial leg all the time. There was no inflammation about his stump. It was healthy and free from any discharge. It had healed entirely.

Cross-examined by Mr. McPherson:

320 Mr. Bailey died about three weeks after I left the house. About a week after I left he was taken to his bed, but not constantly. Dr. Crouse attended him the whole time I was there, and until his death. Dr. Crouse was there every day while I was there, and sometimes twice a day. When we first went there to live he was quite sick, but got better, and on two occasions came down to the city. About three or four days after he got worse again. I speak of his sickness in September. During his last sickness, of which he died, he had much cough and expectorated a good deal. He never raised any blood that I know of. I have every reason to know that he didn't, because I was frequently with his wife when she cleaned the room up, and I saw no blood. He had what I thought a bad cough, when I went to the house on Capitol Hill to live. He died in the evening, about half past 5 o'clock. His wife had held him in her arms in the morning. I
321 wanted to relieve her, but he would not let anybody touch him but his wife.

ELIZABETH WAGNER.

Sworn and subscribed to before me this 24th day of September, 1868.
JOHN J. JOHNSON, *Examiner.*

Cross-examination of Henry A. Brewster.

Cross-examination of Henry A. Brewster.

The first time I saw Mr. Bailey was at Mrs. Von Komecher's boarding-house, in pursuance of an arrangement between Mrs. Von Komecher and my clerk; I remained at the house from five to fifteen minutes; Dr. Eliot went with me; Mrs. Von Komecher, and I think Mr. Bailey, was in the room; I must have seen him some time, and I think it was there; I think Dr. Eliot went into the room with me; at all events, he went to the house with me; this was the time the application for
322 the policy was made, and I believe Mr. Bailey signed it.

I supposed Mr. Bailey's health was good at that time, or I should not have taken his application for a policy; I presume I did not observe any cough; I don't recall that he had any cough; according to my recollection he had no symptom of sickness; I understood his leg had been amputated; I did not examine it, nor did I ask him about it.

Q. In taking the answers of applicants for insurance to the interrogatories propounded, has it or not been a common practice on your part to insert the name of some examining physician of the company, in lieu of the family physician of the party, or one *to* whom the party has

usually consulted or employed, in reference to the 25th interrogatory, in the application now shown you, marked H. A. B., No. 1?

A. When an applicant applies for a policy of insurance, we
323 always enquire, "Who is your family physician?" when the response comes back to us, "I have no family physician," and if a physician of the company examines the party, we, as a matter of reference, insert the name of the examiner in the application.

Q. Then the face of the application would not show the answer made by the applicant to the above interrogatory, would it?

A. Of course, it would not.

Q. Have you any recollection that the applicant, Albert W. Bailey, or Mrs. Von Komecher, ever told you in response to the above interrogatory, that Dr. Eliot was the family physician or one usually employed or consulted?

A. I have not.

Q. Do you recollect that Dr. Eliot ever objected to the insertion of his name in lieu of that of the family physician for the physician usually consulted or employed?

A. He may have done so.

324 Q. Do you recollect what answer was made by Albert W. Bailey, the applicant, in response to the 25th interrogatory?

A. My impression is, there was no family physician.

Q. Have you any recollection as to what his answer was in response to that interrogatory?

A. I cannot speak definitely; the first query propounded to me covered this whole ground as to our practice.

Q. Even where the party making the application has a family physician, and names him in reply to the 25th interrogatory, do you mean to say that it is not a common occurrence for you to insert the name of an examining physician of the company in lieu of that given by the party?

A. It is not; it is frequently done and frequently otherwise; we insert the name of the family physician of the party always, as a rule, if sickness has been indicated.

Q. I want to know if there are not exceptions, cases where
325 you have entered the examining physician in lieu of that given by the party.

A. Never intentionally.

Q. What do you mean, then, by saying your practice is frequently one way and frequently another?

A. I simply answer the question; when a man says he has no family physician, I insert the name of the examiner.

Q. In taking the answers of the applicant to the interrogatories propounded in the application, do you put down all the party says, or the substance only?

A. These are the answers put down as they were given in this case.

Q. You do not mean to say that Dr. Eliot's name was given to you by the applicant in response to the 25th interrogatory, do you?

A. Certainly it was not.

Q. Do you mean to say that you put down word for word all that an applicant says in response to the different interrogatories?

A. We put down the combined answers.

326 Q. You mean by that the substance of the answers?

A. Yes, sir; certainly.

Q. Then the answers contained in the application are based upon your estimate of their materiality?

A. No, sir; I will not answer it; I have no authority to make an estimate.

Q. How do you get at the substance of the answers?
A. By the answer itself.
Q. Who extends the substance from the answer?
A. I get at it myself.
Q. After you read the answers to the interrogatories, is it your practice to read the application, with the answers filled up, to the applicant.
A. We propound the questions which are given there, and note the answers. We do not read it over to the applicant.
Q. How long after you saw Bailey when he made the application, before you met him again?
327 A. I have no recollection of ever having met him again. I have no recollection of seeing him but once in my life.
Q. Was a new application made for the second policy of insurance?
A. No, sir.
Q. Was a second medical examination made?
A. I only know that a certificate came from Dr. Eliot?
Q. Where is that certificate?
A. I sent it to the office, I suppose. I have no knowledge of its location since.
(Notice to produce given and accepted, and agreed that the testimony of Dr. Eliot, as to substance of certificate, may be received, unless the certificate be produced.)
Q. You say you have no recollection of ever having seen Bailey after his application for the first policy?
A. I have no such recollection.
Q. Did you or not urge Bailey to *insure* the amount of the policy from $4,000 to $6,000, or from $4,000 to $10,000, or after the insuring of the first policy, from $6,000 to $10,000?
A. Never, to my recollection.
328 Q. I will ask you when you employed John H. Wise in this case.
A. The date I can't speak of; the time was when the news came to me that this man was sick of intemperance, as reported to me.
Q. State about the time.
A. The time was when it was reported to me that Bailey was ill from intemperance; I can't state the date without reference to my cash-book.
Q. What is the occupation of Mr. Wise?
A. I always supposed he was in the police business.
Q. Did you or not employ him as a detective in the present case, to work up?
A. I called upon Mr. Wise, and gave him the money, and requested him to tender it to Mrs. Bailey.
Q. Do mean to say that is all that passed between you and Wise?
A. Conversation upon the subject may have transpired.
Q. Did you or not state the case to him as you understood it at
329 that time, and employ him as a detective to hunt up evidence to invalidate the policy?
A. I called upon Mr. Wise and gave him the money, and requested him to give it to Mrs. Bailey, and demand the policy.
(Question repeated.)
A. I called upon Mr. Wise and gave him the money, and requested him to give the money to Mrs. Bailey, and demand the policy.
Q. State whether or not, to your knowledge, John H. Wise has been engaged in gathering evidence whereby the policies of insurance in question might be invalidated?
A. I suppose he has.

Q. State why you suppose it.

A. An attorney of the company came to this place, and I suggested to him that Mr. Wise would be a proper person to talk with.

Q. What else?

A. From time to time Mr. Wise—I have nothing further to say upon the matter.

Q. Has Wise ever seen you about this case?

A. Certainly.

330 Q. How often?

A. I can't state.

Q. About how often?

A. I can't say how often; I don't know that I have seen him regularly at all. I have seen him occasionally.

Q. When you have seen him, were your interviews purely of a social character, or did they relate to the invalidation of the policies of insurance involved in this case?

A. I have given Mr. Wise no instruction. He has spoken of the business. His life is insured with me, and we have frequently met upon social matters.

(Question repeated.)

A. They have frequently related to the business in hand; he simply reported to me from time to time.

Q. Have you ever paid him any money?

A. I can't say without reference to my books.

Q. If you paid any, by what authority?

A. It would be by authority of the company.

331 Q. Have you any knowledge or information of any contract or understanding between him and the company, or any agent thereof, for compensation for services in defeating the claim of the defendant?

A. No, sir; I have no such knowledge or information.

Q. Have you any knowledge or information as to what is the arrangement between the company, or any agent thereof, and Wise?

A. No, sir.

Q. Have ever been present at any interview between the president of the company and Wise?

A. No, sir; not to my recollection.

Q. Have you ever received any instruction in relation to the payment of money to Wise?

A. I shall have to refer to my letters.

Adjourned till to-morrow, 10 o'clock, at the same place.

JOHN J. JOHNSON, *Examiner.*

Met pursuant to above adjournment, and adjourned till Monday next, at the same hour and place.

JOHN J. JOHNSON, *Examiner.*

332 Met and adjourned till Tuesday morning, at the same hour and place.

JOHN J. JOHNSON, *Examiner.*

Met and adjourned till Wednesday morning, at the same hour and place.

JOHN J. JOHNSON, *Examiner.*

Met pursuant to adjournment, and the cross-examination of Mr. Brewster was resumed, when he further testifies as follows:

Q. You say you have no recollection of ever having seen Albert W. Bailey more than once; will you now state whether, in point of fact, the premium on the policy for $6,000 was not paid in two different payments?

(Mr. Appleby objects to the further cross-examination on the ground that *by* leave granted by the court to take testimony in this case has expired, unless Mr. Davidge, for defendant, allows the complainant the privilege to examine three or four witnesses in rebuttal of testimony.)

333 A. My impression is that it was paid in two payments.

Q. When, and at what places, respectively, and by whom were these two payments made?

A. I think the payments were made at my office by Mrs. Bailey. I can't say the dates exactly. My cash-book will state the time.

Q. Was or not the original application for $4,000, and afterwards was not the policy issued for $6,000?

A. Yes, sir.

Q. When, where, and by whom was the application for the increase made, and was it oral or in writing?

A. I think it was made by Mrs. Bailey at my office. I think it was made orally.

Q. Was this before or after her marriage?

A. The first was before, I think, and the increase after.

Q. Was both these applications made before the policy was issued?

A. My impression is this, that the original application was for $4,000, and the policy came on for $4,000. I cannot answer without looking at my books.

334 Q. When, where, and by whom were the blanks in the application for insurance already referred to filled up?

A. They were filled up by me at the house kept by that woman before she was Mrs. Bailey. It was on E street, I think.

Q. Who were present when those blanks were filled up?

A. I think Mr. Bailey was there. I think the defendant was there, and my impression is that this little girl I see about here was there. Dr. Eliot made the examination there at that time, I think. I know of no other persons present.

Q. Did Dr. Eliot fill up the blanks on the other side of the application at the same time and in your presence?

A. I think not.

Q. Did you take Dr. Eliot to see Mr. Bailey before Mr. Bailey had made the application in writing, the blanks of which you say were filled up by you?

A. Dr. Eliot went with me to the house at the time the application was made, according to my recollection.

335 Q. Do you mean to say that the application in writing signed by A. W. Bailey was not made before you took Dr. Eliot to the house?

I think it was not.

Q. Did you see Dr. Eliot fill up the blanks on the back of that application?

A. I don't think I did.

Q. When and from whom did you get it after it was filled up by Dr. Eliot?

A. Dr. Eliot handed it to me, I think. I don't remember when Dr Eliot handed it to me.

Q. When and where did you give it to Dr. Eliot?

A. I think I handed it to him at the house on E street—at the time it was taken, probably.

Q. In point of fact, was not Mr. Bailey absent when you and Dr. Eliot went to his house, or to the house on E street, of which you have spoken?

A. I think he was absent and called in.

336 Q. In point of fact, did not Mr. Bailey and the defendant call at your office, and did you not fill up the application there and go with them to Dr. Eliot's office and find him absent?

A. I do not remember any such transaction.

Q. Did they not a few days afterwards call again, and go alone to Dr. Eliot's office, and after that did not Dr. Eliot fill up the blanks of the application as signed by him?

A. I do not know.

Q. Did you see Dr. Eliot make his examination of Mr. Bailey?

A. I don't remember.

Q. Had you more than one interview on the subject of this insurance with Dr. Eliot?

A. No, sir; not to my recollection.

Q. When and where was the certificate filled up and signed by Mrs. Von Kamecher, which appears at the foot of the application?

337 A. My impression is that it was at the house on E street, at the same time the application was made, I think.

Q. By whom was it filled up?

A. I think by myself; the handwriting will show.

Q. Do you recollect whether there was more than one inkstand or pen used by you on that occasion?

A. I have no recollection.

Q. Can you say whether Mrs. Von Komecher used the same ink in affixing her signature that you used in filling up the blanks of the application and of the certificate?

A. I know nothing about it.

Q. Did you see her make her signature?

A. I think I did.

Q. Can you now state positively or not whether the first payment you received on account of that policy was or not made at the said house on E street, and whether Mrs. Von Komecher did not there, at

338 the time the payment was made, sign that certificate?

A. I do not remember.

Q. Did you see Mr. Bailey again after the first policy was issued, and before the second was issued?

A. Not to my recollection.

Q. Had you any knowledge of his having been examined again by Dr. Eliot before that second policy was issued?

A. None aside from Dr. Eliot's certificate, which was brought to me.

Q. Please to state whether Mr. Bailey was not at your office before you went to see him at the house on E street.

A. Not to my recollection.

Q. Can you describe—and, if so, please to give the description of—the personal appearance of Mr. Bailey?

A. I cannot describe his personal appearance now.

Q. How long did your interview with him continue?

339 A. But a few moments.

Q. Did you make any appointment with him to meet Dr. Eliot at his house on E street?

A. I remember none.

Q. Can you recollect any other case in which, on a verbal application of a third party for insurance, you, without further conference or arrangement, took the doctor with you and went to a strange house to take the application of the party to be insured?

A. No, sir.

Q. What reason, if any, was assigned to you to induce you to go to the house on E street, with the doctor, instead of requiring the party desiring to be insured to come to your office.

A. I went at the request of the party that called at the office; I can't say what reason was assigned for it.

Q. Have you any recollection of the time of day at which you went to the house on E street, whether it was before or after noon? Fix the time of day as near as you can.

340 A. Probably about four o'clock.

Q. Had you given any notice to the parties, or either of them, that you were coming, and would bring the doctor with you?

A. I think I was requested to go, and the time named, and that I would probably be there at that time; that is about as near as my memory serves me.

Q. Do I understand you to say that Mr. Bailey was not there at that time, and you waited for him to come in before the examination was made?

A. If he was not in at the time, he came in very soon after; I can't call to mind whether he stood in the room when I went in or not.

Q. Did Dr. Eliot remain all the time you were filling up the blanks?

A. I cannot state.

Q. What did you do with the application after you had filled up the blanks?

A. I sent it to the office.

Q. What office?

341 A. At Hartford.

Q. I mean, what did you do with the application as soon as you had filled the blanks?

A. I placed it in Dr. Eliot's hands after it was signed.

Q. Do you mean that you placed it in Dr. Eliot's hands at that time and in the house at E street?

A. Precise time and place I cannot state.

Q. The question is, whether you left that application at the house on E street, when you left, after it was signed?

A. Probably not; I cannot state positively, however.

Q. Did you leave Dr. Eliot at that house?

A. I cannot say.

Q. Are you quite positive that you never saw Mr. Bailey at your office?

A. I have no recollection of having seen him there.

By Mr. McPherson for complainant:

Q. Can you now state what disposition you made of the ap-

342 plication when completed, and the date of such disposition? If so, state it.

A. I find at looking at my letter-book, June 11, 1867, which I now produce—I find it reads, "After my mail left yesterday, Dr. Eliot handed me enclosed application for Mr. Bailey, for $4,000." Signed by

me as general agent, addressed to J. F. Burnes, secretary; and from this it went to the company at Hartford.

Q. Has that application ever been in your possession since?

A. No, sir.

Q. Did you ever see it afterwards?

A. Not until it was presented to me in this cause.

Q. Was there a policy issued upon that application?

A. A policy was issued upon that application for $4,000, No. 20783.

Q. In whose name was that policy?

A. Albert W. Bailey, I think.

343 Q. How long after he made the application was the policy received?

A. I think on the 12th; it may have been on the 13th. It did not get here until the 13th, although it is entered on my books of the 12th, as that is the date of the policy.

Q. Was the premium paid to you before or after the receipt of the policy by you?

A. The entry upon my cash-book shows it as of the 14th of June; I say the 14th, I think, is the date.

Q. Can you state independently, without reference to your cash-book, whether the premium was received by you before or after the policy came from Hartford?

A. I cannot.

Q. Do you ever receive premiums before the application is accepted by the company?

A. Sometimes we do; in such cases we have a form of conditional receipt, which we give.

Q. What became of the policy for $4,000?

A. It was returned by me to the company, as appears by *me*

344 letter-book, on the 18th of June, and another of $6,000, returned to me in its place. The entry in the letter-book reads as follows: "I return 20783; $6,000 is wanted in name of wife."

Q. Please produce your cash-book and refer to it, and state what day the premium on $4,000 policy was paid to you.

A. The entry on the cash-book reads as of the 14th day of June, 1867.

Q. Did Mr. Bailey, when you were taking his answers to the application, give you the name of any physician who had been attending him?

A. He did not, to my recollection.

Q. If he had given you the name of such physician, would it or not have appeared in his answers on the application?

(Objected to.

Question repeated.)

A. Yes; it would have been entered if the name had been given.

Q. You have already stated upon your cross-examination, in

345 substance, that you do not put down, word for word, all the applicant says in response to interrogatoris; why do you not put it all down?

(Objected to.)

A. I don't recollect answering any such question in that form.

Q. I now read you what you did say: "Do you mean to say that you put down, word for word, all that applicant says in response to the different interrogatories." "The answers we put down—the combined answer." Why do you not put down the whole answer?

A. The whole answer is generally put down; it sometimes spreads out in an irrelevant connection, that we could not put all down.

Q. Did you go with Mr. and Mrs. Bailey to Dr. Eliot's, on the occasion of the examination for the second insurance?

A. I do not recollect of doing so.

Q. Did Mr. Bailey state to you, when taking his answers on the application, that his father had a fever which turned into a cough
346 and consumption, of which he died suddenly, and did you then remark, "We put it down as fever, that will take the best?"

A. No, sir

Q. Did any such conversation occur, or anything like it?

A. No, sir; not that I ever heard.

Q. Had you any reason or motive whatever for suppressing or changing the answer given by the applicant?

A. No, sir.

Q. Have you any interest, and what interest, in inducing the company to insure lives?

A. I am a salaried officer of the company; I have no interest in inducing the company to insure lives, independent in prosecuting the regular business.

Q. Did Mr. Bailey state to you that he doubted whether the doctor would take him, as he had been sick with a bad cold; did you then offer to go with him to the doctor, and did you say, "I think we can shove you in?"

347 A. Not to my knowledge or recollection.

Q. Have you any recollection of any such conversation, or anything like it?

A. No, sir.

By counsel for defendant:

Q. Do you mean to be understood in your last answers to refer exclusively to the interview which you state you had with Mr. and Mrs. Bailey at the house on E street?

A. According to my recollection, I had no conversation with Mr. and Mrs. Bailey at any other time or place.

Q. When you received the premium on the first policy, or on the increase of it, or on the last policy, did you see Mr. Bailey; and, if so, where was he?

A. Not to my recollection.

Q. Had you any knowledge of Mr. Bailey going to Dr. Eliot's office at any time to be examined?

A. I have no recollection of anything of the kind.

348 Q. How came you to insert Dr. Eliot's name in the application which was signed by Mr. Bailey?

(Objected to.)

A. It was inserted simply as the medical referee.

Q. Was it done at Mr. Bailey's instance or with his knowledge?

(Objected to.)

A. I think it was done with his knowledge.

Q. When a conditional receipt for premium [is] given by you, at what date does it appear in your cash-book?

A. I cannot say.

Q. Did you or not in this case give a conditional receipt in printed form, the blanks being filled up to suit the case?

A. I do not recollect of doing it; if I did the paper is in existence somewhere probably.

Q. When you give a conditional receipt, and afterwards the policy is issued, what is done with the receipt?

A. If we issue a conditional receipt, we intend when we deliver the policy to take it up.

349 Q. In this case, then, if you issued a conditional, would you not take up that receipt?

A. Probably.

Q. Can you or not state positively whether you did or did not accompany Mr. and Mrs. Bailey to Dr. Eliot's office, on the occasion of the examination for the second insurance?

A. I have no recollection of doing it.

(Q. repeated.)

A. I have no recollection of anything of the kind. I can't call to mind *of* anything of the kind.

Q. Can you state whether Dr. Eliot's office has two rooms in it or not?

A. Yes, sir; it has two rooms.

Q. Did you ever go there with any person to be examined, accompanied by a lady, when Dr. Eliot took the applicant into the back-room to be examined?

(Objected to as irrelevant to any matter enquired of on the re-direct examination.)

A. Dr. Eliot had a desk in the back-room as well as the front; when persons went in there he frequently said, sit down here, sir.

350 (Q. repeated.)

A. I do not call to mind just such a scene as that; it may have transpired.

Q. In taking down Mr. Bailey's answers to the questions in the application, you say Mr. Bailey did not state that his father had a fever which turned into cough and consumption. Did you write down precisely what Mr. Bailey did say, or did you give what you understood to be a combined substance of his father's death?

A. I think I wrote what he did say. I have no knowledge that the word consumption ever reached my ear in relation to the case.

Q. Does or not your salary depend upon the amount of business done by the agency in Washington?

A. No, sir.

H. A. BREWSTER.

Sworn to and subscribed before me this 27th day of October, 1868.

JOHN J. JOHNSON, *Examiner.*

351 *Deposition of Elizabeth A. Bailey for defendant.*

Elizabeth A. Bailey, being duly sworn, deposes and says:

I reside in this city, and am defendant in this cause.

Q. How long did you know Mr. Bailey before your marriage?

A. About two years and six months.

Q. When were you married?

A. On the 22d of June, 1867.

Q. How long had he resided in your family as boarder before you were married?

A. He boarded with me or my mother all the time I knew him, excepting once he went away and staid three weeks, and once about four weeks, as near as I can recollect as to the time.

Q. Is your memory good as to dates, and can you fix those periods of absence?

A. My memory is not good as to dates, and I cannot fix the times.

352 Q. During all the time you first knew him, up to the period of his marriage with you, what were his habits as to drinking spirituous liquors or opium?

A. He used to sometimes take a drink; I never heard of his taking opium.

Q. Had he any regular habit in drinking spirituous liquors?

A. He had no habit of it. He just took a drink occasionally. I never saw him drink whiskey. I have seen him drink ale and weiss-beer, which he brought into the house.

Q. Did you ever see him intoxicated before your marriage with him?

A. Yes, sir; I have seen him intoxicated before my marriage.

Q. State when and where, and under what circumstances, you saw him intoxicated, and how often.

A. I saw him intoxicated twice before I was married; when I first got acquainted with him—when he boarded with my mother. He

353 went out one evening with two gentlemen, as he said, to play billiards. He came in between ten and eleven o'clock. I saw that he had been drinking. I can't tell when was the next time, but it was while I was a widow. He came in one evening, and I saw that he had been drinking. While I was a widow he joined the temperance society, and did not drink anything. He joined the temperance society which met at the corner of 19th and 20th streets, in this city. I saw him every day, and I could see from his manner that he had been drinking. These are the only occasions which I recollect of that I saw that he had been drinking freely.

Q. Did he ever join the temperance society again?

A. Yes, sir.

Q. Prior to his joining it the second time, did he regularly resign, or receive a paper of dismissal or transfer?

A. He received a paper recommending him to another lodge, on account of the distance, after we moved down town. I am quite

354 positive I have that paper, and will annex it hereto.

Q. Do you recollect going with him and Mr. and Mrs. Seymour when he went to unite with the Good Templers on 9th street? Had Mr. Bailey prior to that time, and while you were residing on E street, been addicted to drinking spirituous liquors to excess?

A. I recollect going with him and Mr. and Mrs. Seymour, when he united with the Good Templers. He had not prior to that time, and while I resided on E street, been addicted to drinking intoxicating liquors to excess.

Q. Did you, on that occasion, after you had got up to the last broad step leading to the room, say that you wished him, Mr. Bailey, to join a temperance society, and leave off drinking, in order to be braced up and get his life insured; that you would not marry him unless he got his life insured?

A. Nothing of the sort or kind was every mentioned in any shape or form. I deny every word of it.

355 Q. Did you ask Mrs. Seymour to assist you in prevailing on Mr. Bailey to give up drinking, and did she go with you on that occasion, at your request, to get him to join the temperance society?

A. No, sir; I did not ask her to take either one of us. She made the proposition herself, saying there were young people there, and it would be a pleasant way of spending the evening, or something to that effect. I can't remember whether she was boarding with me then or not.

Q. At that time, or at any other time before the last policy was taken out, did you ever tell Mrs. Seymour or any one else that Mr. Bailey had the consumption?

A. Not to my recollection.

Q. Did you ever hear him say, during that time, to any person in your presence, that he had the consumption?

A. No, sir. I heard him say he had a bad cold.

356 Q. What was the general state of Mr. Bailey's health from the time you first knew him until after the second policy was taken out?

A. From the time that I first knew him up to the taking out of the second policy, he never was sick, excepting ten days; he was sick in bed with the jaundice, as the doctor called it. He always remarked how good his health was, although he did [not] look strong.

Q. During this same time, do you recollect his being attacked with a cough or cold in the winter or spring before your marriage, and did you know or learn from him that he was prescribed for by Dr. Young, although Dr. Young did not visit the house?

A. In the month of May he had a bad cold. Dr. Young visited the house several times until he got well.

Q. Were you aware of the fact that Dr. Young had prescribed for him prior to that time?

A. No, sir. I knew nothing of it until I heard Dr. Young's testimony on the stand; Mr. Bailey never complained of anything, and I knew nothing of it.

357 Q. Do you know whether Dr. Young prescribed for him cod-liver oil and whiskey, and he, Mr. Bailey, followed that prescription?

A. I don't know whether he prescribed it or not. I am positive he did not take it; if he did, I am quite positive I should have seen it, because I attended to the medicines. I recollect making a remark at the time, I did not want him to take whiskey.

Q. Did any Dr. Young attend him at your house, in the month of July, or August, 1866, while Mrs. Seymour boarded there?

A. No, sir; he never was sick a day while she boarded there.

Q. Did you go to the temperance hall on 9th street with Mrs. and Mr. Seymour and Mr. Bailey on the 18th of April, 1867; and, if so, was Mr. Bailey then intoxicated?

A. I went with them to the temperance hall on 9th street. I don't know the date, but it was after Mr. Bailey had been admitted; Mr. Bailey was not intoxicated on that occasion, as I was aware of.

358 Q. Had Mr. Bailey any habitual cough continuing for any considerable length of time, at any time prior to the taking out of the first policy?

A. He had none, except the bad cold he had in the month of May, as stated before, when he was attended by Dr. Young. That was the only time I ever knew him to be sick; he was completely cured of that.

Q. State what was the condition of the stump of his leg up to and after the date of your marriage.

A. He never complained of his leg; it had healed up; he never went on crutches, except when he was getting his leg fixed; he usually walked without a stick.

Q. Were you familiar with the facts and circumstances attending his taking out the first policy of insurance? and, if so, please to state, in a narrative form, as well as you can recollect, all these facts and circumstances as they occurred, to the final issuing of the policy.

359 A. Mr. Bailey had often spoken of having his life insured. He went to two companies, Mr. King's company and Mr. Merryman's, and they refused to take him because his limb was off; they did not take persons with their limbs off. He came home one day and said he was either going to have his life insured in the Phœnix or Equitable. He had a book he had got from the Equitable, saying he saw the agent, and he promised to call on him again. Afterwards he said he had concluded to have it insured for $3,000 or $4,000 in the Phœnix. Mr. Bailey, and myself, and my oldest little girl were out walking one day, and we stopped in The Phœnix Mutual Life Insurance Company, all three of us. I saw Mr. Brewster, whom I now recognize as Mr. Brewster, and several others, sitting in the room. Mr. Bailey told Mr. Brewster that he thought of having his life insured, and mine also. They talked about an hour, when Mr. Brewster gave him a book and tract, and a piece of composition, either poetry or prose, that he, Brewster, had composed. Mr. Bailey told him that he was not then prepared
360 to be insured, but would call again. This was, I think, in the first part of May; I know it was before he had his first sickness in May. Mr. Brewster wanted him to have it done right away; he took out a paper and wanted it done then. We then returned home, and Mr. Bailey was taken with a cough; I don't remember how long it was; after he got well, we went down there again; my little daughter was with us again. Mr. Bailey said to Mr. Brewster that he had been sick, and was then at that time hoarse. Mr. Brewster then read from a paper, and asked questions about his parents, &c. Mr. Bailey said, "I don't know whether the doctor will take me, as I have been sick with a bad cold." Mr. Brewster made this remark, he said, "I will go with you to the doctor's—it is just a short distance from here—Dr. Eliot; I think we can shove you in;" these were his identical words. I then returned home with my daughter, and Mr. Bailey went to the doctor's with Mr. Brewster. When Mr. Bailey came home he said that Dr. Eliot
361 was not in, and that Mr. Brewster had promised to call at our house in a few days and bring the doctor with him, as Mr. Bailey could not come down again. Mr. Brewster, with Dr. Eliot, did call within a few days, and Mr. Bailey was not at home; they waited, I think, about fifteen minutes, when Dr. Eliot said he could wait no longer. Mr. Brewster said, let Mr. Bailey come down to his office, and he would go to Dr. Eliot's with him. Mr. Bailey did go down in a few days, and went to Dr. Eliot's office; I was present. Dr. Eliot took him in a room and measured him and examined him; he took out his watch when he examined him. Dr. Eliot asked him to show him his leg, and Mr. Bailey moved it about; Dr. Eliot struck Mr. Bailey three times on the upper part of the breast, and measured him around the chest with a tape, and put his ear back of his shoulder blade, and took out his watch and felt his pulse. We then went back to the office, and I paid him the
362 money; before I paid the money all these questions were asked. Dr. Eliot asked him the same questions that Mr. Brewster had asked him.

The paper, Exhibit H. A. B., No. 1, is the paper from which the questions were asked, and was signed by Mr. Bailey and myself, as it purports to be. I then paid the interest on $4,000 out of my own money, and Mr. Bailey said he would pay enough in a few days to increase it to $6,000. This was before I was married. In a few days afterwards he paid the balance, and got the policy for six thousand dollars. The policy was altered from Mrs. Von Komecher to Mrs. Bailey. Mr. Bailey said he would soon have it increased to $10,000; that the money he got

as a pension would just about do it, but he was not able at present to do it; that he would not have it in that company, but would insure in the Equitable. Mr. Brewster then kept him there an hour or so, showing him the books of other companies. He told Mr. Bailey that no company paid so well as the Phœnix, as the Phœnix had less
363 losses than any other company. Mr. Brewster said, "Why not have it done now? our company can pay $10,000 as well as it can one thousand dollars," and said, "Have it done right away;" and said, "If you should drop before you get home, and your wife comes back here, I will pay her the money, and tell her how is the best way to have it invested." Mr. Bailey said he had not the money then, and Mr. Brewster said, "I will trust you; you can pay it when you get it, if you will have your life insured to $10,000." Mr. Bailey said he did not do business in that way, but as soon as he got the money he would come and see him, and have it increased. Mr. Bailey did go again, and I went to Dr. Eliot's with him, when he was examined the second time. We went back to the office and paid the money, and Mr. Brewster said he would have the papers sent on from Hartford as soon as they were fixed. A gentleman came and brought the policy to my house, and gave me a paper for Mr. Bailey to sign, which he did.

364 Q. Do you remember the question as to what *what* disease Mr. Bailey's father died of, and what Mr. Bailey's answer was? and, if so, please state it, and what passed.

A. Mr. Bailey said his father first had a fever, which turned into a cough and consumption, which he died suddenly. Mr. Brewster made the remark, "We put it down a fever; that will take the best." That was all that was said.

Q. Do you recollect Mr. Brewster asking him who was his family physician?

A. Nothing was said on the subject by Mr. Brewster.

Q. Do you recollect whether clause No. 28 was read to Mr. Bailey?

A. I do not remember. He may have asked it. Mr. Brewster said he must have a name of some person as to Mr. Bailey's habits. Mr. Bailey said he would call a friend, a gentleman that boarded with us in the house. Mr. Brewster asked me if I was not acquainted with him. I told him I was, and engaged to be married to him. He said it
365 would do for me to sign it. I signed this at my house. The certificate was filled up at the office.

Q. Was anything said about taking insurance on your own life; and, if so, what was said on the subject by Mr. Brewster?

A. I said I thought of having my life insured for my children for $2,000. Mr. Brewster asked me about my family. I told him father and brother died of consumption, and that I spit blood, and had hemorrages. He made a remark that I looked bad, and that he would see me again.

Q. How did Mr. Bailey contract that cold which he took in the spring of 1867?

A. We went to the theatre one evening, and he left me there while he went home after an umbrella, and got himself wet, and when we went home he laid down on the sofa in his wet clothes. The next day he complained of pains in his bones. He did not want to have a doctor, but I told him he had better have one, as he had a high fever. I asked him what doctor he wanted, and he said if he
366 had to have a doctor he wanted Dr. Young. He wrote down where Dr. Young lived, and I sent for him. This was in the

month of May, and the first time that he ever visited the house to my recollection.

Q. Do you know Mrs. Wilmot Anna Lawrence, who lived at Carroll Place last spring, who was a witness in this case?

A. Yes, sir.

Q. Is she a friend of yours, and how long has she been?

A. We were friends about a year and a half, up to one or two weeks after Mr. Bailey died.

Q. Did she then, or at any other time, tell you, in parting with you the last time at her house—say to you—that she desired that her acquaintance with you should cease?

A. She did not. Since she has been a witness on the stand against me she sent me word by my little girl that she was going to be married, come up and see her, and that she was sorry that she had said anything about me.

367 Q. During your intimacy with her, and either shortly before or after your husband's death, did you have any quarrel or disagreement with her?

A. After Mr. Bailey's death I thought to take a room at her house, and board with her. Mr. Bailey's aunt, Miss Von Allstine, and myself and little girl went and staid with Mrs. Lawrence a few days, upon her invitation, until I got a house or made up my mind to stay with her. Three young gentlemen called one Sunday evening in a hack to see Mrs. Lawrence. She said they were from New York; she said those gentlemen were coming again another evening to take her a carriage-riding, and asked me if I would not like to go with them to Alexandria to eat oysters and ice-cream. I asked her who was going, and she said the three gentlemen, and her daughter-in-law, and herself were going, and [asked] if I would not too, as it would be some excitement for me.

368 I made the remark, how could we all sit in one carriage? She said, us ladies could sit in the gentlemen's laps. I said I could not think of such a thing, having so soon buried my husband, and they were perfect strangers to me. I then went up-stairs and beckoned to Miss Von Allstine, and went up-stairs and went to bed. Before this I promised I would give Mrs. Lawrence $1,000, and open a boarding-house with her. When I got up-stairs I told Miss Von Allstine about the carriage-ride, and my going into partnership with Mrs. Lawrence. She said I should not stay there another day; that she was not a woman of good principles; and that she would not leave Washington until I was settled in somebody else's house. Miss Von Allstine went next day to see the Rev. Mr. Markham, and he recommended her to get rooms for me opposite where he was living. She and I left the next day. Mrs. Lawrence told me the next day, when I went after some music I had left, that Mr. Wise, for the insurance company, had been there to see her, and that I never should have one

369 dollar of the money if she could prevent it, because I did not take the room from her. My acquaintance with her then ceased. I never went inside of the house again.

Q. Did you ever say to Mrs. Lawrence, in the spring of 1867, and the winter previous, or at any other time, that if you could get Mr. Bailey's life insured you would marry him, and if you could not get his life insured you would not marry him, as you did not intend to spend your money that you had got on your first husband's life policy in taking care of Bailey, as he had the consumption, and could not live more than a year at the furthest; or did you say to her, "You ought to hear him cough; he coughs all night long;" this last in the spring of 1867?

(Objected to because she has already testified that she never told any person that Bailey had the consumption.)

A. I am positive I never told her anything of the kind.

370 Q. Did Mr. Lawrence ever say to you that if there was any company in the United States that would insure his (Bailey's) life, it would insure a dead man; did you say in reply, there was a way to do these things, and if you could succeed, you would get his life insured; and he replied, if you would stoop to bribe the doctor or practice fraud you might succeed, for Mr. Bailey was too far gone with consumption to be passed in any company? Did that or any such like conversation ever occur between yourself and Mr. Lawrence?

A. No, sir; it is all false from beginning to end; I never had any such conversation with Mr. Lawrence, or any one else.

Q. Did you, about a year ago last May, or at any other time, tell Mrs. Lawrence that you had succeeded in getting Mr. Bailey's life insured, add, "My God! he can't live long, he spits like hell, and raises like the devil," or any words of like import?

A. No, sir; I solemnly deny, before my Maker, that I ever used such words from my childhood up; those are words that I never take unto my mouth on any occasion.

371 Q. Are you or not a member of any religious denomination; and, if so, to what church do you belong?

A. I am a member of John C. Smith's Fourth Presbyterian Church, corner of Ninth and G streets; I was brought up in the Bible class of the Old School Presbyterians, Brooklyn, of which my parents were members. Mr. Van Dyke, corner of Clinton and Remson streets, was then and is still pastor, where my parents are members. I was first married by Mr. Van Dyke, and the last time by John C Smith.

Q. Did Mrs. Lawrence ever say to you that if Mr. Bailey should die in a very short time, she didn't think you could get a dollar of the insurance money, and you replied, that you felt perfectly secure in the matter, that you had the papers all right; or did any such conversation ever take place between you in Mr. Bailey's lifetime?

A. No, sir; not that I am aware of.

372 Q. Did Mrs. Lawrence call upon you in the month of May, 1867, or at any other time, when Mr. Bailey was lying on the bed, apparently asleep, and remarked to you that he, Bailey, looked worse, and you reply that he had passed through such a severe examination by the doctor for his life insurance that it had caused him to spit blood?

A. No, sir; I never said anything of the kind.

Q. In point of fact, did Mr. Bailey ever spit blood, to your knowledge?

A. No, sir; he never did; I am sure, because I cleaned the spittoons and would have seen it.

Q. Did or not Mrs. Lawrence continue or propose to act towards you, as far as you know, as your warm friend up to the time you left the house, after your husband's death?

A. Yes, sir; she used to come to see me most every night, and used to take a drink of Mr. Bailey's whiskey that was prescribed by the doctor. I gave her a bottle to take home with her once; this was in the latter part of September, or the first part of October, just before his death. She was also at his funeral.

Q. Do you recollect when Mr. and Mrs. Seymour first came to your house to board?

373 A. I am not positive, but I think it was either in July or August, 1866.

Q. How long did they stay there?
A. About six weeks.
Q. Was Mr. Bailey sick while they were there?
A. No, sir; not one day.
Q. Did you know Mrs. Seymour before?
A. I never laid eyes on her until she came there to board.
Q. Did you tell her the first day she came there that you were engaged to be married to Mr. Bailey?
A. No, sir.
Q. Did Mr. Bailey ever occupy your back parlor as a chamber before or after your marriage?
(Objected to.)
A. He never occupied it.
Q. I read to you from Mrs. Seymour's testimony: "The first time he, Mr. Bailey, spoke to me of having his life insured he was in bed, sick, in the back-parlor, in his own house on E street, after it had been insured. My husband was with me, and Mr. Bailey told Mrs. Bailey to get him the policies, and I think she handed it to my husband.
374 Mr. Seymour looked at them and said to Mr. Bailey, 'Do they insure dead men in this office?' He said to Mr. Bailey he did not know how he passed the doctor. Mrs. Bailey said he thumped him pretty hard and he nearly fainted. The doctor thumped him very hard, he nearly fainted, and she got him out of the office as soon as she could, to give him something to strengthen him. I asked Mr. Bailey how he got to the doctor's office; he said Lizzie had been giving him some things to brace him up, to enable him to go there; that Lizzie had been a great deal better to him since his marriage than she was before, giving him things." Did that conversation, or any one of like purport, ever occur between you and Mr. Seymour, Mrs. Seymour, and Mr. Bailey?
A. No, sir; nothing of the kind ever occurred.
Q. Did you ever tell Mrs. Seymour before your marriage that you gave Mr. Bailey strengthening things to brace him up to have
375 his life insured, as Mr. Bailey was in a deep consumption, and could not live long; and did you ever say this to her while she boarded at your house, or any words of like import?
(Objected to.)
A. No, sir; nothing of the kind.
Q. Did you ever tell Mrs. Seymour that you would not marry Mr. Bailey without his life was insured?
A. No, sir.
Q. Do you recollect Mrs. Seymour being requested by Mr. Bailey to make up or to alter some shirts; if so, were you present when the measurement was taken, and in what manner was it done?
A. I was present. They were too large, and she was going to make them smaller; she put the shirts over his head, and put pins in the shoulders and sleeves, and measured it in that way; I saw no measuring tape.
Q. Can you recollect about what time that was?
376 A. I am quite positive she was boarding with us at that time; she asked Mr. Bailey to step into the back-parlor. She occupied it at that time. Mr. Bailey never had been sick a day at that time.
Q. Did you ever tell Mrs. Seymour that you had gone to Teutonia Hall and found him drinking with the girls, and asked what he was doing there, and that you slapped him aside of the head, so that he reeled and liked to fell over?

A. I did not tell her that, but I tell you what I did tell her: One evening we were going to the theatre; Mr. Bailey said he was going out a few moments to get shaved; he staid so long that I said I don't know what kept him; there was a gentleman with me at that time, made a remark to me, said, "Mrs. Bailey, I left him at a place on the avenue to get a glass of beer, and I will go with you, as you are ready, and I will walk down with you to the avenue and tell him to come out."

377 Mr. Bailey came down and wanted me to go to the theatre, but I was angry, and would not go, but went back home and he went with me; I did not go into Teutonia Hall, or slap him aside of the head, nor see him with any girls, nor did I tell Mrs. Seymour any such thing.

Q. Do you recollect Mr. Bailey saying anything to Mrs. Seymour in your presence about your having struck him with a horsewhip? and, if so, please state as well as you recollect all that passed?

A. Mr. Bailey and I had been out buggy-riding; she came in, we were in the hall together, tusselling in fun; he had the whip, and I was trying to get it from him; I got it away from [him] and struck him on the leg, and dropped the whip and ran up-stairs, and sat at the top of the stairs, laughing, and Mrs. Seymour said something to this effect, "Is that the way you let your wife whip you?" He was always full of fun.

Adjourned till to-morrow morning at 10 o'clock.

JOHN J. JOHNSON, *Examiner.*

Met pursuant to adjournment, and adjourned till Friday morning, at the same place.

JOHN J. JOHNSON, *Examiner.*

378 Met pursuant to above adjournment, when the examination-in-chief of Mrs. Elizabeth Bailey was resumed as follows:

Q. Have you found—if so, annex to your testimony—the certificate of dismissal of Mr. Bailey from the lodge of the Good Templars on 19th street, spoken of in your testimony on your former examination?

A. I have, and herewith produce the paper.

(Which said paper is herewith filed, marked Exhibit E. B., No. 1. Mr. Appleby objects to the introduction of the paper.)

Q. Referring to that paper, dated the 21st of August, 1866, can you or not now state positively whether Mr. [Bailey] did or not entirely abstain from the use of intoxicating liquors for two months prior to the date thereof?

A. He never went out in the evenings two months prior to that date, excepting I went with him; he would not even drink soda water;

379 I have known him to refuse to drink soda water; I am positive that he drank no liquors during that time.

Q. At *what* time was your intercourse with him so intimate that if he had drank intoxicating liquors you would have perceived it, either by the odor of his breath or by his manner and appearance?

A. Yes, sir; he was boarding at my house, and keeping company with me, and eat at the same table with me and my children, and spent his evenings with me after office hours.

Q. Have you in your possession the original appointment of Mr. Bailey as a clerk in the Third Auditor's Office of the Treasury Department? and, if so, please produce it.

A. I have, and herewith annex it to my deposition.

(Which said paper is herewith filed, marked Exhibit E. B., No. 2.)

Q. How long before your marriage with him, as well as you can recollect, was it Mr. Bailey was removed from office?

A. I think about one month.

380 Q. What was the state of his health at that time?

A. It was the same as it always had been; that was after he had had the cough.

Q. Do you mean the cough for which Dr. Young attended him in the spring before your marriage with him?

A. Yes, sir.

Q. Had he entirely recovered from that cough at the time of his removal, or was he then recovering, and how soon after did he recover?

A. He had this cough when he was in the office in the spring; after his removal he seemed as well as he ever was; he said he was well.

Q. Did you, in the month of June, or the first part of July, 1867, show the two policies of insurance to Mrs. Seymour, while Mr. Bailey was sick in bed, you three only being present, and tell her that you yourself had paid for them out of your own money, and you did not think you would have the second premium to pay, as Mr. Bailey

381 was so far gone with consumption; and did Mr. Bailey reply that he was going to leave you better off than your first husband had?

(Objected to as leading, and although for the purposes of contradiction it involves evidence per se, and goes to the very gist of the issue.)

A. I had no such conversation at that time, because I only had one policy at that time. In the month of August, after I returned from Hagerstown, where I had been to see his brother, Mr. Bailey was not sick in the bed. I am quite positive, because he had not been sick in the bed at that time at all, and Mrs. Seymour was there, and Mr. Bailey came into the room, and walked to the window and stood there; this was the back-room, second story. I showed Mrs. Seymour the papers, but no such conversation occurred as regards my paying for the second policy. I paid for the first $4,000 out of my own money, and Mr.

382 Bailey paid the balance out of his pension money. I deny frankly I said I would not have to pay the premium a second time, or that Mr. Bailey was so far gone with consumption, or words to that effect, at that or any other time.

Q. Did you ever show the policies to Mr. and Mrs. Seymour together at any time?

A. I showed the policies to them both when they were together.

Q. Can you recollect whether this was before you showed them to Mrs. Seymour or after?

A. It was after.

Q. At that time, did Mr. Seymour look at the policies, and say to Mr. Bailey, "Do they insure dead men in this office?" and ask him how he passed the doctor; and did you remark that the doctor thumped him pretty hard and he nearly fainted, and that you got him out of the office as soon as you could, and gave him something to strengthen him?

A. No, sir; I did not.

Q. State all that passed in that interview about insurance as

383 near as you can recollect.

A. Captain Seymour and his wife called at my house one evening after this time. She said would I please show the policies to her husband, she wanted him to have his life insured. Mr. Bailey and myself were in the dining-room. I went up-stairs and got the policies and brought them down, and Mrs. Seymour handed them to her husband, and he looked at them. She told him that she would like to have

his life insured; he (Captain Seymour) replied that they never insured men that went to sea, and that he was liable to be turned out of office at any time, and would be obliged to go to sea; that was the way I came to show them the policies the second time.

(Answer objected to as not responsive.)

Q. Please to state whether the conversation that you have just testified to is or not the same one referred to in your previous ex-
384 amination, in which you say you showed the policies to Mr. and Mrs. Seymour, and did you ever show them to them more than once?

A. I showed the policies to Mrs. Seymour up in the chamber when she was alone. I afterwards showed them to him and her in the dining-room at Mrs. Seymour's request; this was the only time I ever showed them to them when they were both together. Mr. Bailey was present at both times.

Q. Had you at any time—and, if so, when—any misunderstanding or disagreement with Mrs. Seymour? and if you had, state whether she used any language threatening in *their* character.

A. I had a quarrel with Mrs. Seymour about the last of August, before Mr. Bailey's death, and just before we moved on the Hill. Mrs. Seymour came and asked me to lend her thirty dollars until her husband got his pay; she did not say that it was for furniture. I lent her fifteen dollars at that time; she did not call at the time she
385 promised to pay me, and I went up to the house after it; then she refused to pay me. Mr. Bailey said he would go to the Treasury and have Mr. Seymour put out of office if he did not pay me. She said she would be even with me; that she would go to Mr. McPherson, or some of the company, and complain to him, and that I never should get the money; that she would say that Mr. Bailey died from drink, or words to that effect. One day she came to the front door and handed me the money, and I gave her that receipt she produced.

Q. At that quarrel between yourself and Mrs. Seymour, was her husband present, and did you say that she was a damn liar and that he was a damn liar, and did he tell you to leave the house, that he wanted no words with you?

A. Her husband was not present at the beginning of the conversation; he was in the yard. She called him up-stairs and told him about the money and furniture, and that I had ordered her to get it.
386 We had some words. She said she would not pay me, and I said she should pay me.' Mr. Seymour said she ought not to borrow any money, and scolded her for it, and said that he would see that I was paid. He did not order me out of the house. They both went to the door with me, pleasant. I did not say at that time that she was a damn liar, or that he was a damn liar. No such language was used. I never use such words at any time.

Q. During Mr. Bailey's last illness, was he or not supplied with every comfort and all proper attendance suited to his condition, and did he ever, in your presence, complain of any deficiency in those two respects, and what did he say on that subject?

A. He was supplied with all comforts and attendance suited to his condition. He never complained, but scolded me, and said I bought him *to* much. I bought him every comfort. I bought him fruits, and they would spoil—he would not use them—chickens, partridges, &c.

387 Q. State the condition of the stump of his leg during his last illness.

A. It was just as well as it could be; one hour before he died he

showed it to all there. Mr. Markham, the minister, was present. He told all about how he came to have it cut off.

Q. During the time that you knew him, [was it] for two days in succession so sore that he could not wear his artificial limb?

A. No, sir; only when he was having his artificial limb fixed. He said it chafed him This was two or three different times.

Examination-in-chief here rested.

Adjourned till to-morrow morning at 10 o'clock.

JOHN J. JOHNSON, *Examiner.*

388 Met pursuant to adjournment, and the cross-examination commenced.

Cross-examined by John D. McPherson, solicitor for complainant:

Q. State where you lived in Washington since you first became acquainted with Mr. Bailey.

A. I first got acquainted with him at my mother's house, I think, on H street, between 20th and 21st streets. I then went to live on I street, between 20th and 21st streets, and kept boarding-house. I went to live on E street, next door to the corner of 10th and E streets. From there we went to live on Capitol Hill.

Q. Please give the dates of your removal from one place to the other.

A. It was in the spring when I moved from I street to E street, in May or June, 1866; the same of the date of the temperance paper,
389 an exhibit in this case. I don't remember when I moved from my mother's; I was only with her a little while. I moved on the Hill in September, 1867, the year that Mr. Bailey died. I can surely say I lived on I street a year, and perhaps a little over.

Q. Was Mr. Bailey an inmate of your house all that time?

A. He was, excepting on two occasions, when he went away to board; once two or three weeks, again it might have been a month.

Q. Where were you living when he left your house on these two occasions?

A. I think it was on I street.

Q. About what time did you become engaged to Mr. Bailey?

A. It was on I street. I cannot tell the month. It might have been six months after I moved on I street. I am not positive as to that.

Q. What Maryland company, of which you spoke, to which Mr. Bailey made application for insurance?

390 A. I could not say. It was in Wright's store. A gentleman came in and showed him a book, and asked him if he would not like to have his life insured. I was with him at that time. I don't know who the agent was, or where the company was; all I know this gentleman said they took them with their limbs off. This was a year before he was insured.

Q. Were you with him when he went to Mr. King's company?

A. Yes, sir; I was there on business with Mr. King.

Q. At what time, and where were you living when the application to Mr. King's company was made?

A. I was living on E street. It was about the month of August, 1866.

Q. About what time was it you first went to Mr. Brewster's office?

A. It was in the month of May, 1867.

Q. For two or three months' previous to that day had Mr. Bailey been absent from the office much?

391 A. He was absent when he was sick under Dr. Young's care.

Q. Was that previous to your first visit to Mr. Brewster's office?

A. Yes, sir.

Q. What was the cause of his absence?

A. He had a bad cold and fever. Dr. Young attended him. This was in the spring.

Q. I am now asking you about the time previous to your first visit to Mr. Brewster's office.

A. That is what I have answered.

Q. Was he so sick at that time as not to be able to attend to his office?

A. He was, about eight to ten days. He was sick in about eight to ten days, and then he was up again.

Q. Was not his sickness aggravated by his drinking?

A. No, sir; he drank nothing then but ale and a little weiss-beer. He was particular about his drinking.

392 Q. Had he not been drinking within three months before you first applied to Mr. Brewster's office; I mean drinking to such an extent so as to be under the influence of liquor?

A. No, sir; not so as he was intoxicated; he drank, as I have told you, ale and weiss-beer; I know when a man is drunk; my first husband drank.

Q. Did you ever know him to be sick before Dr. Young attended him?

A. He was sick, once to my knowledge, with the jaundice or liver complaint, and another doctor attended him; that was the only time.

Q. How long was this before he was sick in the spring of 1867?

A. I can't say the time, but I think it was when we first moved on E street.

Q. Were you with him or nursed him when he was sick with the jaundice?

A. He was a boarder at my house, and I saw that he was attended to.

Q. State what the doctor said.

A. I got his medicines, and the doctor said it was the liver complaint or jaundice.

393 Q. State whether you yourself got the medicines; and, if so, where.

A. I am quite sure that the doctor was homeopathic, and furnished his own medicines.

Q. Please state the name of the doctor, and who sent for him.

A. I don't know his name; Mr. Bailey sent for him; I want him on the stand, but could not find him; I never saw him but that once; Mr. Bailey got well and did not need a doctor. I tried to find him by describing him, but could not; I understood he left the city.

Q. How many times did the doctor call at your house when Mr. Bailey was sick with this liver complaint?

A. Twice; or three times at most.

Q. Can you fix the precise date of this sickness?

A. I cannot; it was when we first moved on E street.

Q. Whilst you lived in the 1st ward, how many times did you see Mr. Bailey under the influence of liquor?

394 A. Twice; once when I boarded with my mother, he went out to play billiards, and when he came in, I saw that he had been drinking; I can't say about what time the other was; it was not at my mother's, but at my own house up town.

Q. How often did you see him under the influence of liquor when you lived on E street?

A. I did not see him at all intoxicated, but he drank ale and weiss-beer.

Q. When he was intoxicated at your own house up town, was any person present besides yourself?

A. No, sir; I was alone when he came in, and I saw that he had been drinking.

Q. Did he ever drink whiskey or brandy at your house on I street?

A. No, sir; I never saw him drink any.

Q. Can you state about what time he left your house to stay away one, two, or three weeks, and at another time four weeks?

A. No, sir; I cannot remember the time.

395 Q. Which time was the first in occurrence, the two or three weeks, or three or four weeks?

A. I could not say which was the first.

Q. Did this absence, or either of them, occur during the latter part of the time you lived on I street?

A. I could not say.

Q. Do you know where Mr. Bailey went during these absences?

A. He staid in the city, but I do not know where he went; I think once he had a room in a hotel and ate his meals at a restaurant.

Q. Did you see him at any time, in any place, whilst he was not boarding at your house on these two occasions?

A. I did; he called to see my husband and family.

Q. Do you remember when your first husband died?

A. He died in the month of May, the year that I lived on I street; I think in May, 1866. He had been dead a year and a month when I married.

396 Q. Don't you know that Mr. Bailey, during these absences, was on a drunken frolic?

A. No, sir; I do not know it; I know he was not, because he came up to my house of evenings and played euchre with my husband. I was not very intimate with him, and I did not ask him where he boarded.

Q. Do you know a Mr. Gaines of the Treasury Department?

A. I did know a gentleman named Gaines; I don't know what office he is in; he boarded with my mother, and then boarded with me on I street.

Q. Do you remember whether either of these absences occurred whilst Mr. Gaines boarded with you?

A. I do not remember.

Q. Did Mr. Bailey ever come home intoxicated whilst Mr. Gaines boarded with you?

A. I did not see him intoxicated.

Q. Did you ever go to Mr. Brewster's office after the first policy was issued for $6,000; and, if so, when?

397 A. Yes, sir; I can't say when; it was with my little girl and Mr. Bailey.

Q. Were you married to Mr. Bailey at that time?

A. Yes, sir.

Q. Can you tell how long after your marriage was it?

A. I cannot; I cannot remember dates.

Q. You say you was married on the 22d of June, 1867; did you go on a wedding tour; and, if so, how long were you gone?

A. I did go to Philadelphia; I was gone four or five days; I don't remember which.

Q. Did you ever before or after the spring of 1867, when Dr. Young attended Mr. Bailey, engage for Mr. Bailey the services of any other physician?

A. I never engaged any doctors myself; Mr. Bailey always sent for them himself, except Dr. Crouse.

Q. Do you know whether Mr. Bailey himself sent for any doctor before or after Dr. Young attended him?

398 A. He went up to see Dr. Magruder; I don't remember when it was. Dr. Magruder was down in his buggy, and Mr. Bailey was sitting in the area reading a newspaper, and Mr. Bailey spoke to him. Dr. Magruder didn't come in my house. Dr. Magruder never attended Mr. Bailey at my house.

Q. Can you not state positively whether or not he was attended by Doctor Magruder after his marriage?

A. He never was inside of my house.

Q. Do you not remember of Mr. Bailey's being prescribed for after his marriage?

A. No, sir; it was before his marriage; Mr. Bailey went up to his house.

Q. Do you remember whether he was ever prescribed for by any physician after his marriage?

A. No, sir; excepting Dr. Crouse.

Q. Do you mean to be understood to say that no physician prescribed for Mr. Bailey after Dr. Young excepting Dr. Crouse?

A. Yes, sir.

Q. Was it after your return from Philadelphia that you, in company with Mr. Bailey, went to Mr. Brewster's office?

399 A. I think it was.

Q. Did you not go to Mr. Brewster's office after your return from Philadelphia without Mr. Bailey being with you?

A. I did not go alone.

Q. Did you ever go alone?

A. No, sir.

Q. Did you ever go without Mr. Bailey being with you, either before or after marriage?

A. No, sir; Mr. Bailey was with me every time I went.

Q. Did you ever go to his office in company with another lady?

A. I don't remember.

Q. When Mr. Bailey was examined in Dr. Eliot's office, according to your statement, was any person else than yourself, Mr. Bailey, and the doctor present?

A. No one was present the first time; the second time Mr. Brewster was present.

Q. Did you go with Mr. Bailey from the house the first time to the doctor's office, or did you meet him there?

400 A. We went to Mr. Brewster's office, and Mr. Brewster went with Mr. Bailey to the doctor's office; I went home; when Mr. Bailey came home he said the doctor was not in; that Mr. Brewster would bring the doctor to the house; they did come, but Mr. Bailey was not in; I told Mr. Brewster to call again; about a week passed again, when we went to Mr. Brewster's office, and then to Dr. Eliot's.

Q. What was done when you went to Mr. Brewster's office, before going to Dr. Eliot's; did he go with you or not?

A. I saw Mr. Brewster, and he went with us to Dr. Eliot's office; Mr. Brewster took out the paper and asked the questions about Mr. Bailey's family; we then went up to the doctor's office, and he examined him; I am wrong; this paper was read the first; Mr. Bailey went to the office; nothing was done this time that I recollect.

Q. What became of that paper to which you allude in the intermediate time?

A. I don't know what became of it.

401 Q. Do you know whether Dr. Eliot saw it or not?

A. He did, and asked Mr. Bailey the same questions that Mr. Brewster did.

Q. When did Dr. Eliot see it, to your knowledge?

A. At the time he examined Mr. Bailey the first time.

Q. Who took that paper to Dr. Eliot's office?

A. I don't know; I am sure I did not.

Q. Did you hear the questions contained in that paper produced by Mr. Brewster or Dr Eliot to Mr. Bailey, and did you see Mr. Brewster or Dr. Eliot take down the answers given by Mr. Bailey in writing; and, if so, when and where?

A. I heard Mr. Brewster ask Mr. Bailey the questions at his office the first time he went there. Dr. Eliot did not ask him so many questions as Mr. Brewster did. I saw Mr. Brewster writing at the desk as he asked the questions. Dr. Eliot wrote some too. Mr. Brewster wrote this the first time Mr. Bailey went in to have his life insured;

402 Dr. Eliot wrote at his office the first time he examined him.

Q. Was Mr. Bailey at Dr. Eliot's office more than once before he obtained the first policy for $6,000?

A. He was there once, and Dr. Eliot was not in, and once when he was examined for the first policy.

Q. Can you state whether Dr. Eliot more than once wrote down answers of Mr. Bailey to any questions before the first policy of $6,000 was obtained?

A. No, sir; only once.

Q. Did Dr. Eliot ask Mr. Bailey any questions prior to the obtainment of the second policy, and after your marriage?

A. No, sir; he did not. He only examined him, except to ask him how his health had been.

Q. Were you at Dr. Eliot's office during both examinations; and, if so, could you see the conduct of the examination?

A. Yes, sir; I was there both times, and saw the examination.

403 Q. Did you notice whether his weight was taken at that time? If so, state what it was.

A. His weight was not taken. He asked Mr. Bailey, and Mr. Bailey told him.

Q. Did you ever see him weigh?

A. I have seen Mr. Bailey weigh at Mr. Wright's grocery store.

Q. When he weighed at that time, was his leg off or on?

A. His leg was on. He weighed one hundred and forty to one hundred and forty-five with his leg off.

Q. At what time did he weigh this?

A. At different times; when we lived up on E street, and when we went up there.

Q. Did he weigh more when you lived on I street than he did when you lived on E street?

A. Not that I know of.

Q. Did you know a Miss Gonzalves, now deceased?

404 A. I met a person at Mr. Lawrence's house once or twice by that name. I don't know her; I just met her.

Q. Did you not refuse to go to the funeral of Miss Gonzalves, or some person by that name, because Mr. Bailey was too drunk to go with you, and you would not go without his escort?

A. I now know who you have reference to. They said she belonged to the temperance division, and Mrs. Seymour came once, and said a lady belonging to the temperance was dead, and asked me if I would not like to go to the funeral on Sunday. I went with her, and would like to have had Mr. Bailey gone. Mr. Bailey was out walking with his brother, and knew nothing about it. I deny that he refused to go, because he was not in. I did not refuse to go, because I did go. Mr. Bailey was not in; he was out walking with his brother. I did not refuse to go because Mr. Bailey was too drunk. I don't know the name of the lady who died.

Q. How often in the spring of 1867 did Mr. Young visit your house whilst Mr. Bailey was sick in bed with the cold contracted by going to the theatre and getting wet in the rain?

405 A. I don't know how many times he visited him.

Q. During any of his visits, did you see Dr. Young converse with him.

A. I did.

Q. Did he tell you in any of these conversations what was the matter with Mr. Bailey?

A. He told me had a throat disease; I can't remember the name.

Q. What did you give Mr. Bailey for his cough, at this time?

A. I don't know what the medicines were; I gave what the doctor ordered.

Q. Did he take whiskey at that time?

A. No, sir.

Q. Did you ever give him whiskey?

A. Yes, sir; Dr. Crouse did.

Q. Did you give him whiskey before Dr. Crouse prescribed it?

A. No, sir.

Q. Do you remember an interview with Mrs. Seymour, when she saw whiskey upon the mantle-piece, and asked you whether you were

406 giving him whiskey, and you replied you were, with some other remarks?

A. No, sir; I never gave him whiskey on E street; Dr. Young was attending him. Mrs. Seymour never came to my house in Mr. Bailey's lifetime.

Q. Had you any communication at all with Mrs. Seymour after you removed to Capitol Hill?

A. None; only I sent her a note saying that Mr. Bailey was very sick; she paid no attention to it.

Q. Do I understand you to say that Mr. Brewster was not present when Mr. Bailey was examined the first time by Dr. Eliot?

A. He was not present; he was present at the second examination for the second policy, $4,000.

Re-direct:

Q. Do you recollect, after your marriage, to have met Dr. Magruder in the street, and telling him that you were married, and that your husband was sick with a cough and asked him what you should

407 do for it, or something of that kind, and his telling you to send Mr. Bailey up to see him?

A. I did meet him, and told him that Mr. Bailey had a bad cold; he said he was very busy, but tell Mr. Bailey to come up to the house and see him; Mr. Bailey went up to his house one Sunday morning.

Q. Do you recollect how long it was before Dr. Crouse was called in?

A. It was just before we moved on the Hill; he never came to the house.

By M. McPherson:

Q. Did you sign the certificate upon the application before or after Dr. Eliot's examination?

A. It was after he was examined.

ELIZABETH A. BAILEY.

Sworn to and subscribed before me this 30th day of October, 1868.

JNO. J. JOHNSON, *Examiner.*

Adjourned till Monday, at 12 m.

JOHN J. JOHNSON, *Examiner.*

408 DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, John J. Johnson, examiner in chancery, do hereby certify that in pursuance of the annexed notice the foregoing depositions were taken down & by me reduced to writing in the presence of, and from the statements of, the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence; the witnesses having been by me first duly sworn to testify the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

JOHN J. JOHNSON, *Examiner.*

409 *Exhibit marked "E. B., No. 1."*

INDEPENDENT ORDER OF GOOD TEMPLARS.

To whom it may concern:

This certifies that A. H. Bailey, whose signature appears in the margin in his own handwriting, was, on the 12th day of June, 1866, regularly admitted a member of Morning Star Lodge, No. 3, located in Washington, D. C., and working under a legal and unreclaimed charter, granted by the Grand Lodge of the Independent Order of Good Templars of *the* North America on the 13th day of January, 1866.

Having paid all demands against him up to the 31st day of July, 1866, and being under no charge whatever, we have granted him this clearance card, and recommend him to the due regards of all the members of this order.

In witness whereof we have caused this to be signed by our W. C. T. and W. S., and the seal of our lodge to be attached, in the city of Washington, D. C., the twenty-first day of August, one thousand eight hundred and sixty-six.

[NO SEAL.]

C. S. SHEPHERD, *W. C. T.*
J. W. HARSHA, *W. S.*

[In the margin,] (A. W. Bailey.)

410 *Exhibit marked "E. B., No. 2."*

TREASURY DEPARTMENT,
April 24th, 1866.

SIR: Having been examined and found qualified to perform the duties of a temporary clerkship of the first class, you are hereby appointed a clerk of that class in the office of the Third Auditor of the Treasury.

I am, very respectfully,

H. McCULLOCH,
Secretary of the Treasury.

A. W. BAILEY, Esq.

411 *Order certifying cause to general term for hearing in first instance, and staying proceedings at law until after such hearing.—Filed May 27, '69.*

In the supreme court of the District of Columbia, May special term, before Justice Olin.

PHŒNIX MUTUAL LIFE INS. CO. OF HARTford, Ct.,
vs.
ELIZABETH A. BAILEY. } 1188, equity docket 8.

This cause being set for hearing on bill, answers, and proofs, it is, 27th day of May, 1869,

Ordered that the said cause be certified for hearing in the first instance before the court in general term.

412 And it being suggested to the court here that the defendant has, while this cause has been pending in this court, commenced an action in this court on the law side thereof upon the policies of insurance which it is the object of this suit to have surrendered and cancelled,

It is ordered that the said proceedings at law be stayed until this cause be heard at gen. term.

A. B. OLIN, *Justice.*

Motion of def't to set aside order of May 27th, 1869.—Filed May 31, '69.

THE PHŒNIX MUTUAL INS. CO.
vs.
ELIZABETH A. BAILEY. } 1188, equity.

The court is moved to set aside the order passed on the 27th of May, 1869, in the above-entitled cause, because—

1. The said order was improvidently granted; and
2. There was no proper notice given to def't.

W. D. DAVIDGE, *for Def't.*

413 *Order for hearing motion to vacate order of May 27.—Filed May 31, '69.*

PHŒNIX MUTUAL LIFE INS. CO.
vs.
ELIZABETH A. BAILEY. } 1188, equity.

Ordered, this 31st of May, 1869, that the motion to vacate the order of the 27th of May, 1869, because improvidently granted and without proper notice to the opposite party, be heard on to-morrow morning at 10 o'clock, provided a copy of this order be served on any solicitor of the complainant this day.

A. B. OLIN, *Justice.*

Order vacating order of 27th of May, 1869.—Filed June 1, 1869.

PHŒNIX MUTUAL LIFE INS. CO.
vs.
ELIZABETH A. BAILEY. } 1188, equity.

The motion to vacate the order passed on the 27th of May, 1869, cer-

tifying the cause to the court in general term for hearing and
414 granting an injunction having been argued by the solicitors of the parties in the above-entitled cause, and considered by the court,

It is thereupon ordered, this 1st day of June, 1869, that the said motion be, and the same is hereby, granted, and the said order be, and the same is hereby, vacated and declared void.

A. B. OLIN, *Justice.*

415 *Proceedings before the supreme court of the District of Columbia in general term, commencing on the third Monday (18th day) of October, 1869.*

MONDAY, *October* 18*th*, 1869.

Session commenced by proclamation of the marshal upon order of Justices Fisher and Olin, present; Chief Justice Cartter and Justice Wylie, absent.

TUESDAY, *November* 9, 1869.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter and Justices Olin, Fisher, and Wylie.

PHŒNIX MUT. LIFE INS. CO. OF HARTFORD, Conn., *vs.* ELIZABETH A. BAILEY. } 1188, equity.

The following agreement is filed:

"It is agreed that this cause be continued to next term, and that the trial of the action at law be postponed till it be heard or determined. The above is in pursuance of the rule of the court.

"W. D. DAVIDGE, *for Def't.*
"J. D. McPHERSON, *for Compl't.*"

416 *Proceedings before the supreme court of the District of Columbia, in general term, commencing on the third Monday (18th day) of April, 1870.*

MONDAY, *April* 18*th*, 1870.

By order of the chief justice, the opening of the court is proclaimed by the marshal. Present, the chief justice and Justices Olin and Wylie; Justice Fisher absent, holding the criminal court.

TUESDAY, *May* 3*d*, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter and Justices Fisher and Wylie.

PHŒNIX MUTUAL LIFE INSURANCE CO. OF Hartford, Conn., *vs.* ELIZABETH BAILEY. } 1188, equity.

This cause having been heard upon the pleadings and proof, and
417 been argued for the complainant, the court thinks proper to dispense with further argument; and it orders that the bill be dismissed, with costs, but without prejudice.

TUESDAY, *May 6th*, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin and Wylie.

PHŒNIX MUTUAL LIFE INSURANCE CO. OF Hartford, Conn., *vs.* ELIZABETH A. BAILEY. } 1188, equity docket 8.

And now comes the complainant by its solicitors, and prays an appeal to the Supreme Court of the United States, and it is allowed.

418 *Bond of appeal to the Sup. Ct. U. S.—Filed Sept.* 20, 1870.

In the supreme court of the district of Columbia, the 20th day of September, 1870.

PHŒNIX MUTUAL LIFE INSURANCE CO., COMplainant, *vs.* ELIZABETH A. BAILEY, DEFENDANT. } In equity, 1188.

Know all men by these presents that we, Henry A. Brewster, general agent of The Phœnix Mutual Life Insurance Company, and John H. Wise, of the city of Washington, D. C., are bound unto the above-named Elizabeth A. Bailey in the sum of five hundred dollars, to be paid to the said Elizabeth A. Bailey, her executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 20th day of September, 1870.

Whereas the above-named complainant, The Phœnix Mutual Life Insurance Company, hath prosecuted an appeal to the Supreme
419 Court of the United States to reverse the decree rendered in the above suit by the supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Phœnix Mutual Life Insurance Company shall prosecute its appeal to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. A. BREWSTER,
General Agent.
JOHN H. WISE.

Sealed and delivered in presence of—
H. R. TAYLOR, Jr.

Approved:

ANDREW WYLIE,
A Justice Sup. Ct. of D. C.

420 *Clerk's certificate.*

DISTRICT OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing pages of

writing are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled "Phœnix Mutual Life Insurance Co. of Hartford, Conn., complainant, vs. Elizabeth A. Bailey, defendant; No. 1188, equity docket 8."

In testimony whereof I hereto subscribe my name and affix the seal of said court this 21st day of September, A. D. 1870.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 270. The Phœnix Mutual Life Insurance Company of Hartford, Conn., appellant, vs. Elizabeth A. Bailey. Dist. of Columbia sup. court. Filed 25th October, 1870.

In the Supreme Court of the United States.

DECEMBER TERM. A. D. 1870.

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, *Appellant.*
vs.
ELIZABETH L. BAILEY.
No. 270.

Brief for Appellant.

This cause comes up by appeal from the Supreme Court of the District of Columbia sitting in equity.

THE CASE.

The bill was filed by the appellant to compel the delivery and cancellation of two certain policies of insurance upon the life of Albert W. Bailey, issued to the appellee on the 12th day of June and 15th day of July, 1867, respectively. Record, pp. 1, 9, 10.

The bill alleged that the said policies had been procured by the defendant by false and fraudulent suppression of material facts, and misrepresentation of material facts. Record, p. 1.

The defendant answered, denying the allegations of the bill in these respects. Record, p. 12.

Replication was made. Record, p. 14.

Proofs were taken, the cause went regularly to hearing, and the bill was dismissed without prejudice. Record, p. 125.

JURISDICTION.

The jurisdiction of courts of equity to compel the d livery up to be cancelled of agreements, &c., obtained through false and fraudulent representations is well established.

Adams' Equity, p. 174.

Story's Eq. Jur., sec. 692.

Insurance cases are particularly within this jurisdiction. Ad. Eq., 176, 179.

FACTS.

About the 10th of June, 1867, the appellee, then Mrs. Von Kammecher, called on the agent of the company in Washington and requested him to visit A. W. Bailey, who desired to have his life insured. (Brewster's dep., Record, p. 16.)

The agent visited A. W. Bailey at appellee's house, propounded to him the usual questions from a printed form, and took down his answers, which he, A. W. Bailey, then signed. Record, pp. 16, 5, 6, 7.

A. W. Bailey, being therein requested to name an intimate friend, he named Mrs. Von Kammecher. (Rec. p. 6 Ans. 27.)

Mrs. Von Kammecher then signed a certificate as to the good health and temperate habits, &c., of the applicant. Record, p. 8.

The appellant desired a policy for himself for $4,000, stating that he was unmarried. (Rec. pp. 17, 5.) He then underwent an examination by the medical examiner of the company and was passed. Rec. p. 8.

A policy for $4,000 was made out for him dated June ~~19~~, 1867. Record p. 104.

On or about the 19th of June, the ~~appellant~~ called on the agent, desired the policy to be made for $4,000, and payable to her as the wife of the appellant, which was done; she paid the premium. Rec. pp. 17, 9, 104.

This was done and the policy issued, bearing the former date June 12, 1867. Rec. p. 9.

The appellee and A. W. Bailey were married June 22, 1867. His dep., rec. p. 152.

Subsequently upon the facts stated in the said application, and a further examination by the medical examiner of the company, another policy was issued to the appellee on the same life for $4,000. Rec. pp. 17, 10.

The assured died of "Phthisis Pulmonalis," tuberculous consumption, Oct. 11, 1867.

The particular misrepresentations and suppressions set forth in the bill, are: That at the time the policies were obtained, the assured was in consumption; had been or was then under medical treatment for the same; both he and the appellee had been advised of the nature and dangerous character of the disease; both believed he was dangerously ill. And yet both he and the appellee suppressed these facts, and represented the contrary. Record pp. 2, 3.

That also the assured was addicted to the habitual use of spirituous liquors, both he and the appellee well knew the fact and denied the same. Record, pp. 2, 3.

That also the assured had applied to another company for a policy, had been examined by their medical examiner, and had been refused. This fact he suppressed. Record, p. 3.

The questions propounded to the assured on these points and his answers, are found in the Record, p. 5. numbered 8, 10, 14, 17, 19, 20, 28.

The certificate of the appellee is found in the record, pp. 8, 9.

Evidence of the state of health and intemperate habits of the assured party at and before just time of obtaining the policies, and of his knowledge and that of the appellee,

on the subject, is found in the following depositions:

W. B. Magruder, p. 29.
Jas. T. Young, p. 44.
W. H. Kuhus, p. 41.
J. P. Keller, p. 43.
J. N. Callan, p. 19.
W. Mann, p. 26.

These prove that in 1866, (after appellee's divorce from Mr. Von Kommecher, and before her marriage with Bailey, Mr. Bailey was under treatment, and was then told that his lungs were diseased, that his chills proceeded from that cause, and he must *strenuously* take care of himself, under treatment, he got no better, and being told so by the physician, left him. Rec., p. 30.

He applied to Dr. Young in February, 1867; was under treatment until May; was then told he had consnmption; was ill in bed May 12, 14. The witness then told Mrs. Bailey, the appellee, in answer to her inquiries, that he had consumption, and might live two years or not more than six months. This she told to Mr. Bailey, and it was repeated in an interview between the witness snd Mr. and Mrs. Bailey. Rec., p. 47.

The assured, in the spring of 1867, told Kuhns, Callan and Kellar separately, and at different times, that he did not expect to live beyond the autumn of that year. Rec., pp. 19, 42, 43.

That these concealments and misrepresentations, were material is proved by Fessenden. Rec., p. 56 and Burrow, Rec., p. 57.

He applied to the medical examiner of the Equitable insurance company for insurance, and was refused. Rec., p. 47.

The representations made to that examiner differed in one important particular from that made to the agent of the Phœnix Co.; to the former he stated that his father died of consumption, (Rec., p. 45); to the latter he stated

that his father died of fever. Rec., p. 6, Ans. 24.

The deposition of Mrs. Sarah J. Seymour proves what must necessarily be inferred from other facts proven, that the appellee, herself, was principally, if not solely, instrumental in procuring ths policies, and did so, well knowing the party insured could live but a few months. Rec., pp. 60 to 65.

It appears incidentally on the cross-examination by appellee's counsel, of appellant's agent, Brewster, that the said agent, in the lifetime of the assured, hearing of his condition employed an agent to tender both the premiums to Mrs. Bailey, and demand the policy. The result is not stated. Rec., p. 99.

Conclusion.

We submit that the decree dismissing the bill should be reversed, and the case remanded with directions to grant the relief prayed for by the appellant.

J. M. CARLISLE,
J. D. McPHERSON,
W. S. COX,
for Appellant.

Supreme Court of the United States.

The Phœnix Mutual Life Insurance Company, Appellant, *vs.* Elizabeth A. Bailey.	Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLEE.

The object of this suit is to enjoin the appellee from assigning, or otherwise disposing of, two policies of life insurance, amounting in the aggregate to $10,000, and to compel her to deliver up the same to be canceled, because some declarations or statements made by the life-insured, in answer to the questions proposed to him upon his application for assurance, were untrue and fraudulent; and, also, because the statements respecting the health, habits, and physical condition of the life-insured, contained in the certificate furnished to the insurance company, (to whom the policies were made payable,) were likewise untrue and fraudulent.

1. It is not alleged in the bill, nor is there any evidence to show, that the appellee has attempted to assign or that she is about to dispose of the policies, consequently no equity jurisdiction can arise from this impending danger.

2. The appellant is not entitled to equitable relief. *There is a complete defense at law* in favor of the appellant, if the allegations of the bill are true. The issues of *fact* raised in the cause are peculiarly suited for the determination of a *jury;* and even if a court of equity has *discretion* to entertain the case, that discretion should not be exercised.

A court of law is the proper tribunal, where the question to be tried is whether a representation was true or false, material or immaterial.

Alexander *v.* Heirs of Muirhead, 2 Dessa. 62, (S. Car.)

New York Fire Insurance Company *v.* Delavan, 8 Paige, 419.

In the case of *The Home Insurance Company of New York* v. *Stanchfield*, (United States circuit court, Minnesota district, reported in the Am. Law Review for April, 1871, p. 564,) the court (Miller and Dillon, JJ.) refused to entertain a bill to cancel a fire policy, filed after a loss, *where the foundation for the relief sought was the fraudulent representations of the assured in procuring the policy*, with respect to the property, its ownership, value, and the amount of the incumbrances, when such fraudulent representations were a good defense at law to an action on the policy, and available, as such, to the company.

In the principal opinion Dillon, J., who delivered it, says:

"We do not deny that equity has jurisdiction, by reason of the fraud alleged, to entertain the suit, but are of opinion that it is inexpedient to exercise it under the case made by the bill. To leave the parties at law seems to be a more reasonable and proper exercise of the discretion which the court has in bills to cancel contracts, than to retain the bill and exercise the authority asked."

In the concurring opinion Mr. Justice Miller uses the following words:

"*I am entirely satisfied with the opinion prepared by the circuit judge, both with the result and the course of argument by which that result is obtained.*"

3. There is no evidence of fraud on the part of Albert W. Bailey (the life-insured) or his wife, and, in the absence of fraud, the policies are not void, even if some of the statements or declarations made by either of them should prove to be untrue.

4. Even if Albert W. Bailey had any of the diseases enumerated by the appellant as those which would avoid the policies, yet, if he did not know or believe at the time the statements were made that he had any of these diseases, the policies cannot be impeached, and it is incumbent on the appellant to show *affirmatively* that Bailey knew he was giving untrue answers.

Swete *v.* Fairlie, 6 Car. & P., 1.

5. From the fact that the insurers frame their questions as they please, and that they do in fact ask a vast variety of questions, embracing all the possibilities which could effect the risk, courts usually, and we think properly, construe these questions and answers quite literally in favor of the answerer, *and strictly against the insurers.*

2 Parsons on Cont., p. 465.

6. In marine policies, the ship, if possible, and in fire policies the building always, are examined by the insurers or their agents. This is carried much further in life policies. Not only is it asked what physician attended the life-insured, and this question must be answered by the name of every physician consulted as such, although he were, in common parlance, a quack; and questions may be and often are put to the physicians named; *but life insurance companies have their own physician regularly appointed, whose business it is to make careful personal inspection of the life-insured.* And, as it has been said in respect to fire policies, that the examination of a building by the insurers throws upon them much responsibility for any infirmities which they could detect, we apprehend that this principle should apply at least with equal force to life policies.

2 Parsons on Cont., 471.

7. There is no sufficient evidence to show that any of the declarations or statements made to the insurers by either Albert G. Bailey, or his wife were false.

8. Assuming that false statements were made by the appellee, yet if these statements were made without collusion

with the life insured, and without his knowledge, the contract of insurance is not vitiated, and the *onus probandi* is on the appellant to show such collusion or knowledge.

9. The *questions of fact* in the case and so numerous and *conflicting that a jury should solve them.*

W. D. DAVIDGE.
for Appellee.

R. B. Washington
for Appee

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